



Department of Justice

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Mr. Helm _____

Mr. Fry _____
Mr. Baker _____
Mr. Callahan _____
Mr. Cleveland _____
Mr. Conrad _____
Mr. Gebhardt _____
Mr. Jenkins _____
Mr. Marshall _____
Mr. Miller, P.S. ☒
Mr. Severs _____
Mr. Thompson _____
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Tele. Room _____
MS Bates _____
Mr. Barnes _____
Mr. Bowers _____
Mr. Herndon ☒
Mr. Conroy _____
Mr. M. _____
Mr. Eardley _____
Mrs. Hogan _____

FOR IMMEDIATE RELEASE
WEDNESDAY, JUNE 6, 1973

Solicitor General Erwin N. Griswold announced today that the government will not appeal the decision by U.S. District Court Judge William M. Byrne, Jr. in Los Angeles, who dismissed the indictment against Anthony J. Russo and Daniel Ellsberg on May 11, 1973.

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Ellsberg Decries 'Police State' Tactics

By STEVEN V. ROBERTS

Special to The New York Times

LOS ANGELES, June 5—Dr. Daniel Ellsberg said today that the break-in at his psychiatrist's office was part of an "executive coup" planned in the White House to "change our form of government to a police state."

The former Defense Department aide talked to newsmen after testifying before a Los Angeles County grand jury that opened an investigation today into the break-in, which took place on Sept. 3, 1971.

Meanwhile, it was disclosed that John D. Ehrlichman, President Nixon's former chief domestic adviser, would testify before the grand jury, possibly later this week. Mr. Ehrlichman had over-all supervision of a White House group called the "plumbers" that was charged with stopping national security leaks and engineered the break-

in at Dr. Ellsberg's psychiatrist.

The break-in was disclosed during Dr. Ellsberg's recent trial on charges of conspiracy, espionage and theft involving his release of the Pentagon papers. It was cited by Judge William Matthew Byrne of Federal District Court as one of the events that "offended a sense of justice" and caused him to drop the charges against Dr. Ellsberg and his co-defendant, Anthony J. Russo Jr.

In a news conference here, Dr. Ellsberg mentioned news reports that the White House "plumbers" had committed other break-ins and said: "Mr. Brezhnev [the Soviet Communist party leader] will find himself more at home when he comes here than I wish he did."

Dr. Ellsberg refused to discuss his own testimony. But, in describing the break-in at the office of his psychiatrist, Dr. Lewis Fielding, in Beverly Hills, Dr. Ellsberg contradicted the

testimony before a Washington grand jury of E. Howard Hunt, who had pleaded guilty to charges stemming from the Watergate burglary and has admitted planning the Beverly Hills break-in. Hunt said that none of Dr. Ellsberg's records were found at the office, but Dr. Ellsberg said there was "every indication" that his records had been located and photographed.

The records, along with those of Dr. Fielding's other patients, were found in considerably disarray after the break-in, Dr. Ellsberg said.

The grand jury also heard testimony today from Dr. Fielding and the maintenance people who were working on the night of the break-in. Tomorrow's witness list includes Hunt and two of his accomplices, Bernard Barker and Eugenio Martinez, who also have pleaded guilty in the Watergate case.

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 The Evening Star (Washington) _____
 The Sunday Star (Washington) _____
 Daily News (New York) _____
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 The Daily World _____
 The New Leader _____
 The Wall Street Journal _____
 The National Observer _____
 People's World _____

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Byrne Apparently Not in Line for FBI Post

Exclusive to The Times from a Staff Writer

WASHINGTON — Atty. Gen. Elliot L. Richardson indicated Monday that U.S. Dist. Judge Matt Byrne of Los Angeles is no longer being considered for the post of FBI director.

Asked at a news conference about the propriety of meetings between former presidential aide John D. Ehrlichman and Byrne during the Pentagon Papers trial over which Byrne presided, Richardson said: "I think it was ill advised."

Byrne disclosed during the trial that he had met twice in April with Ehrlichman, who wanted to discuss the possibility of the judge becoming FBI director. Byrne said that

on both occasions he told Ehrlichman he could not consider another government post until the trial had ended.

Richardson said that an extensive search for an FBI director has produced "a great many candidates," but that the list now had been narrowed considerably.

Asked if Byrne was still among the candidates, Richardson said: "Not that I know of."

Richardson said he did not think national security justified the 1971 break-in at the Beverly Hills office of Daniel Ellsberg's psychiatrist — the disclosure of which contributed to Byrne's decision to dismiss all charges against Ellsberg and codefendant Anthony J. Russo.

"I think the national security justification, even as put forward by the people directly involved, is not convincing," Richardson said.

Such an act "would require an extremely compelling justification," Richardson said, adding that it was one "I can't imagine."

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Date **JUN 5 1973**

The Los Angeles
Times **PT-1 Pg 8**

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Ellsberg Arrives for L. A. Probe

LOS ANGELES, June 4 (AP)—Daniel Ellsberg met with Los Angeles County District Attorney Joseph Busch today, and three Watergate conspirators were brought to Los Angeles. All were prepared to testify at a grand jury probe into the burglary of the office of Ellsberg's psychiatrist.

Secret hearings open Tuesday and are scheduled to continue at least through Friday.

Busch's office said he is still negotiating with several former White House officials, seeking to have them testify voluntarily about the planning of the break-in.

They include former presidential adviser John D. Ehrlichman, former presidential counsel Charles W. Colson and former White House aides Egil Krogh and David Young.

Watergate principals E. Howard Hunt, Bernard Barker and Eugenio Martinez were flown here from the Federal Correctional Institution at Danbury, Conn., on Sunday night. They have been granted immunity from prosecution for their roles in the break-in at the Beverly Hills office of Dr. Lewis Fielding.

The break-in, Sept. 3, 1971, was revealed in April during the Pentagon Papers trial of Ellsberg and Anthony Russo.

U.S. District Court Judge Matt Byrne conducted his own brief investigation into the matter and cited the break-in as one of a series of incidents of governmental misconduct which led him to dismiss all charges on May 11.

A key goal of the local inquiry will be to find out whether psychiatric records were photographed or taken during the break-in. Cuban exile Felipe DeDiego, also expected to testify here under a grant of immunity, has told Florida investigators that he and others who broke into the office photographed psychiatric files.

But DeDiego claimed he didn't see Ellsberg's files. Ellsberg's attorneys have said his files were in Fielding's office when the intruders were there.

Busch's office said Tuesday's witnesses will include Ellsberg, the psychiatrist and various witnesses to the break-in, including cleaning people at the office building who say they saw the intruders there before the entry.

Hunt, Barker and Martinez probably will not testify until later in the week, Busch's office said.

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Date 6-5-73

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Question of Conspiracy Key to Ellsberg Probe

By STEVEN V. ROBERTS
New York Times News Service

LOS ANGELES—A Los Angeles County grand jury opens its investigation tomorrow of the break-in at the office of Dr. Daniel Ellsberg's former psychiatrist. It has two main questions to explore: Who knew about the break-in before and after it happened, and was their conduct criminal?

"We are interested in whether or not there was a conspiracy to commit the crime of burglary or malicious trespassing," explained District Attorney Joseph P. Busch in an interview. "We know a certain group had certain authority to do a certain thing. Whether that amounted to criminal activity depends on what the witnesses have to say."

Already, however, there have been important conflicts in testimony that might bear on the question of conspiracy.

THE FIVE MEN who have admitted staging the break-in on Sept. 3, 1971, have all been granted immunity from prosecution here, so the only real interest focuses on higher-ups. The two principal targets of the investigation appear to be John D. Ehrlichman, and Egil Krogh Jr., Ehrlichman's former assistant. Both Ehrlichman and Krogh have resigned from their government positions.

After the Pentagon Papers started appearing in the New York Times in June 1971, Nixon ordered the creation of a group called the "Plumbers" to stop security leaks, and Ehrlichman was given over-all supervision of the effort.

Krogh was placed in direct command. After Ellsberg was identified in news reports as the man who gave the papers to newsmen, the President said the group's "first priority" should be an investigation of Ellsberg's associates and his motives," as Nixon put it in his statement of May 2.

Krogh has already admitted authorizing the break-in at the office of Dr. Lewis Fielding here as part of that assignment from the President, but Ehrlichman's role is less clear.

FOR INSTANCE, Gen. Robert Cushman, formerly deputy director of the Central Intelligence Agency, told the grand jury last week that Ehrlichman had called him on July 7, 1971 and asked him to provide help to one of the "Plumbers," E. Howard Hunt, Jr., a former C.I.A. agent. Cushman, now

commandant of the Marine Corps, testified early because he will not be available next week.

Two days after Cushman's testimony, Ehrlichman told a Senate Committee in Washington that he did not have the faintest recollection of asking the C.I.A. to help Hunt. But Cushman immediately reconfirmed that the White House aide had in fact, made the request.

Ehrlichman has admitted learning about the break in after it occurred. He did not tell anybody about it, but only warned the intruders not to do it again.

It is considered likely here that former White House aides will claim that the break in was done in the interests of "national security." But investigators feel that Nixon deliberately "excised" the incident from the protection of that argument when he said on May 2 that "I did not authorize and had no knowledge of any illegal means" used by the Plumbers to plug information leaks.

THE FIRST witnesses tomorrow are likely to include Fielding and Ellsberg, and will establish the fact of the break-in. On Wednesday the witnesses will probably include Hunt and two of his accomplices, Bernard Baker and Eugenio Martinez.

The investigators then hope to hear from such witnesses as Ehrlichman, Krogh, and David Young, another member of the Plumbers. But all of them are reassessing their willingness to appear, and if they do not come voluntarily, the subpoena process is long and difficult.

This is not the only problem facing the investigation. Earlier this week Archibald Cox, special Watergate prosecutor, called Busch and suggested delaying the grand jury session so that it would not conflict with the many investigations already going on in Washington.

Busch flew to Washington and apparently convinced Cox there was no conflict. After their meeting last Friday, Cox promised "full cooperation" with the local probe.

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Date **JUN 4 1973**

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Soviets Here Get 'Papers' in '71

By Sanford J. Ungar
Washington Post Staff Writer

The Soviet Embassy here obtained what federal authorities believe to have been a complete set of the top-secret Pentagon Papers during June, 1971, while the Justice Department was in court fighting to cut off newspaper publication of articles based on the documents.

According to Nixon administration sources, the Papers were delivered to the embassy on 16th Street NW on June 16, 1971, the day after U.S. District Court Judge Murray I. Gurfein, in New York, issued a temporary restraining order against The New York Times.

The man who delivered the documents, apparently alone at the time, included a letter, signed with an alias, stating his reasons for passing the Pentagon Papers on to the Soviet government, the sources said.

He has been sought for almost two years, they added, but still has not been even tentatively identified. The alias with which he signed the letter apparently could not be traced.

Nonetheless, the sources said, the federal government knew that the embassy had the documents in advance of arguments before the Supreme Court on whether The Times. The Washington Post and other newspapers were entitled to continue

publishing the documents.

But the government continued to press its case, and the high court ruled 6 to 3 on June 30, 1971, that the Justice Department had not sustained its burden of proof in the civil suits against the newspapers.

The sources stressed that the FBI has no evidence directly or indirectly linking the copy of the documents obtained by the Soviets to any of the newspapers which published them or to Daniel Ellsberg, the former government employee who photocopied the Pentagon Papers and leaked them to the press after he was unsuccessful in getting members of Congress to release them.

(Ellsberg and Anthony J. Russo Jr., both one-time researchers with the Rand Corporation in California, were charged with conspiracy, espionage and theft of government property in connection with disclosure of the documents.)

(But U.S. District Court Judge W. Matt Byrne Jr., citing severe governmental misconduct, last month dismissed the case against the two men before it went to a federal jury in Los Angeles.)

Fifteen copies of the final 47-volume version of the Pentagon Papers were distributed to federal offices and former government offi-

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dials in June, 1969. At least five copies of an earlier draft of the study, divided into 38 volumes, were also in circulation between 1969 and 1971.

Although Soviet possession of the Papers became known to U.S. authorities almost immediately, the information has been a closely guarded secret ever since.

Some details of the situation recently became public, however, in incorrect form, according to The Post's sources — during the final stages of the Pentagon Papers trial and during hearings of the Senate select committee investigating the Watergate affair.

Former White House aide Egil Krogh Jr., for example, swore in an affidavit submitted to Judge Byrne in Los Angeles, that in the summer of 1971 he "was informed by the Federal Bureau of Investigation that the so-called Pentagon Papers were in the possession of the Soviet Embassy, Washington, D.C., prior to their publication by The New York Times newspaper suggesting an effort to aid and abet an enemy of the United States (North Vietnam) through the ally (the Soviet Union)."

Krogh's affidavit was intended to explain the reasons for establishment of "an independent investigatory unit" in the White House, known as the "plumbers," to investigate leaks of national security information.

He acknowledged that the group, which included E. Howard Hunt Jr. and G. Gordon Liddy, later convicted as Watergate conspirators, had broken into the Beverly Hills office of Ellsberg's former psychiatrist and obtained assistance from the Central Intelligence Agency in probing what it considered a major breach of national security.

Bernard L. Barker, another convicted Watergate conspirator, told the Senate Watergate committee under oath on May 25 that he participated in the burglary at the psychiatrist's office to discover "information about a person (Ellsberg) who I had been told by Mr. Hunt was a traitor, who was passing, he or his associates, to a foreign embassy."

Contacted recently on the subject, Justice Department and FBI officials declined to elaborate, citing their concern for national security and foreign relations and a general reluctance to discuss unsolved cases.

A Soviet Embassy press spokesman said that Krogh's sworn allegation was "sheer nonsense."

The Post's sources within the Nixon administration, however, said that the former presidential aide merely erred on one significant detail—the question of whether the Soviet Embassy obtained the documents before or after their initial publication in The New York Times.

They also said it was inconceivable that Krogh had been misinformed by the FBI on the matter in 1971 and that he must have relied on some other source outside the bureau.

Krogh, through his attorney, refused to meet with a reporter to discuss his affidavit and his sources of information in 1971, or to submit answers to specific questions. The attorney said that Krogh, on the basis of "straight national security considerations," does not

feel "at liberty" to go further.

The administration sources said that, contrary to other earlier reports, the documents did not come to the Soviet Embassy by mail and the embassy never contacted the State Department about returning them.

They said there is some question, however, as to the completeness of the copy of the Pentagon Papers obtained by the Soviets.

It is believed that the copy included the four "diplomatic volumes" dealing with early third-party contacts between the United States and North Vietnam aimed at a negotiated settlement of the conflict in Southeast Asia.

Those volumes, constituting a separate part of the top-secret history of U.S. involvement in Vietnam, were held back from the newspapers by Ellsberg in 1971, but were obtained by The Post and other publications through syndicated columnist Jack Anderson in June, 1972. Although still classified, they also eventually became public court exhibits in Los Angeles during the trial of Ellsberg and Russo.

For reasons that were not immediately clear, the matter of Soviet possession of the documents was never brought to the attention of the federal courts—publicly or privately—during the civil suits against the newspapers or the criminal proceedings against Ellsberg and Russo.

In attempting to prove their espionage case against those two defendants, the Justice Department prosecutors relied on the alleged damage that might have been done to the "national defense" had a hypothetical foreign intelligence analyst gained access to the Papers in 1969, when Ellsberg and Russo photocopied them at a Hollywood advertising agency.

(Although the jury never got to hear Judge Byrne's charge or to deliberate on the case, most jurors, in interviews after the dismissal, said they were unconvinced on that point.)

Ellsberg insisted to reporters after the Krogh affidavit was submitted that he knew nothing about the Soviet Embassy obtaining the documents and that Krogh's allegations were a "false" justification for the activities of the White House "plumbers."

Federal officials now acknowledge that they too are puzzled about why Krogh, who is widely known for his sensitivity to "national security" questions, would have raised the issue for public speculation in his affidavit.

Attorney General Elliot L. Richardson acknowledged during his recent confirmation hearings before the Senate Judiciary Committee that Krogh had consulted with him before submitting his affidavit to the court in Los Angeles.

Richardson said he had personally encouraged Krogh to "make a clean breast" of his involvement in the White House investigation of Ellsberg.

The details now available about the Soviet Embassy's possession of the Pentagon Papers help to explain President Nixon's statement of May 22 that when the papers were published "there was every reason to believe this was a security leak of unprecedented proportions." But those details also raise serious implications concerning the administration's past and future conduct in court cases concerning the documents.

If the man who delivered them to the embassy is ever identified and located, for example, he could be the

subject of a far stronger espionage case than the abortive one against Ellsberg and Russo.

Some Justice Department sources suggested that this possibility may help explain the administration's refusal thus far to say that it is definitively dropping a separate federal grand jury investigation of the Pentagon Papers leak that was begun in Boston in the summer of 1971, but suspended in late 1972.

One major unanswered question is why the Justice Department continued to press its case against the newspapers at the Supreme Court in 1971, if it already knew that the documents were in the hands of Soviet officials.

The Post's sources said that Solicitor General Erwin N. Griswold was unaware of the information at the time he argued the government's case before the high court and the U.S. Court of Appeals here.

If he had been, he might not have told the justices on June 26, 1971, that publication of the most sensitive material in the Pentagon Papers "will affect lives. It will affect the process of termination of the war. It will affect the process of recovering prisoners of war."

Other government attorneys, arguing before federal judges at the time, urged that it was essential to keep the documents secret so that

the information in them would not fall into the hands of foreign powers.

One Justice Department official offered the opinion that if the federal courts had been let in on what the FBI already knew, the cases against the newspapers might have been rendered immediately "invalid."

Some judges, the official suggested, "might have said, 'Why keep this stuff from the people any longer, as long as the opposition (the Russians) have it?'"

The Post's sources said they had no idea what the Soviets might have done with the Pentagon Papers on obtaining them or whether the Moscow government found them "useful."

What Price Protest Trials?

By JEFFREY ANTEVIL

OF NEWS Washington Bureau

JUDGE MATT BYRNE'S angry dismissal of charges against Daniel Ellsberg last month brought to a crashing conclusion more than four years of efforts to convict antiwar and other protesters for what the Nixon administration charges was a subversive plot against the government.

The efforts, which cost the American taxpayer many millions of dollars and occupied federal investigators, prosecutors, judges and other law enforcement officials for countless hours, resulted in a total of two convictions, which may still be overturned by a higher court, for the relatively technical offense of smuggling mail from a federal penitentiary. In addition, nine defendants and defense lawyers in the turbulent Chicago Seven trial face possible retrial on contempt charges which could bring them a maximum of six months in jail.

The total amount which the government spent between the indictment of the Democratic National Convention demonstrators in 1969 and the dismissal of the Pentagon Papers case three weeks ago can never be computed with precision. But attorneys who participated in the three most celebrated trials, including former Attorney General Ramsey Clark, gave THE NEWS estimates of prosecution expenditures which range from \$4.4 million to \$8 million for the Chicago Seven, Ellsberg and Berrigan cases alone.

Additional federal and state money, almost certainly ranging into the millions, was spent on other conspiracy trials including those of black militant-Marxist Angela Davis, the Camden 28 draft resisters and the 13 Black Panthers accused of plotting to blow up public buildings in New York.

What the Government Got

The net results for the government were the possible contempt citations for the Chicago defendants and lawyers — if the government decides to retry them — and the conviction of the Rev. Philip Berrigan and Sister Elizabeth McAlister for sneaking letters into and out of the federal jail where Berrigan was serving time for earlier draft board raids.

The two Catholic antiwar activists were members of the Harrisburg Seven accused of a sensational plot to kidnap presidential adviser Henry A. Kissinger and blow up heating tunnels under Washington. Their trial on conspiracy charges ended in a mistrial just over a year ago when the jury deadlocked 10-2 in favor of acquittal, and the government decided not to try them again.

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The government also ruled out new trials for five of the Chicago Seven after an appeals court threw out their convictions for crossing state lines with intent to riot at the 1968 Democratic convention. All seven were acquitted by a federal grand jury on the more serious charge of conspiring to incite riots.

Charges against Ellsberg and co-defendant Anthony Russo for allegedly stealing the top-secret Pentagon study of the Vietnam War and leaking it to the press were dismissed by Byrne on May 11 after a trial that extended over a year and a half. Byrne cited government misconduct so severe as to "offend the sense of justice," including a 1971 break-in by White House employees at the office of Ellsberg's psychiatrist.

Three members of the Ellsberg defense team — former Sen. Charles E. Goodell (R-N.Y.), Leonard

Weinglass and Leonard Boudin — said the defense effort cost nearly \$1 million. The three gave estimates ranging from two to three times that amount for the cost to the government, but they added that it was impossible to determine exactly how much was spent on such things as salaries of FBI agents who investigated the case, the operations of grand juries in Boston and Los Angeles and the trial itself.

Goodell said his guesstimate for the Berrigan trial was over \$1 million. Clark said he had seen figures indicating that direct court costs — not including the lengthy pretrial investigation — exceeded \$1 million.

Weinglass, who was also a defense counsel for the Chicago Seven — and who is one of those facing a possible contempt sentence — said he thought prosecution expenses for that trial totaled \$1.4 million.

Ironically, Weinglass noted, the appeals court said that trial Judge Julius Hoffman committed errors serious enough to reverse the five convictions even before the jury was empaneled. Thus, the attorney said, the more than 20 weeks of trial that followed were, in effect, a waste of time and money.

Clark, who served as attorney general until Nixon succeeded President Johnson in January, 1969, told THE NEWS: "I had no evidence when I left office that would have justified" indicting the Chicago defendants. But the antiwar demonstrators were charged with conspiracy and other federal violations two months after the Nixon administration took office.

A Justice Department spokesman said the government had tried to compute the cost of individual

prosecutions but had found it impossible to arrive at even a ballpark figure.

Clark and Goodell, both outspoken critics of the Nixon administration, said the true cost of the conspiracy trials would have to include not just the money spent by the government but the diversion of manpower from other, more productive types of law enforcement.

"They took many good people — FBI agents, prosecutors, judges and others — from important assignments essential to public safety and put them into this business where they just wasted their time," Clark charged.

He Isn't Looking for More

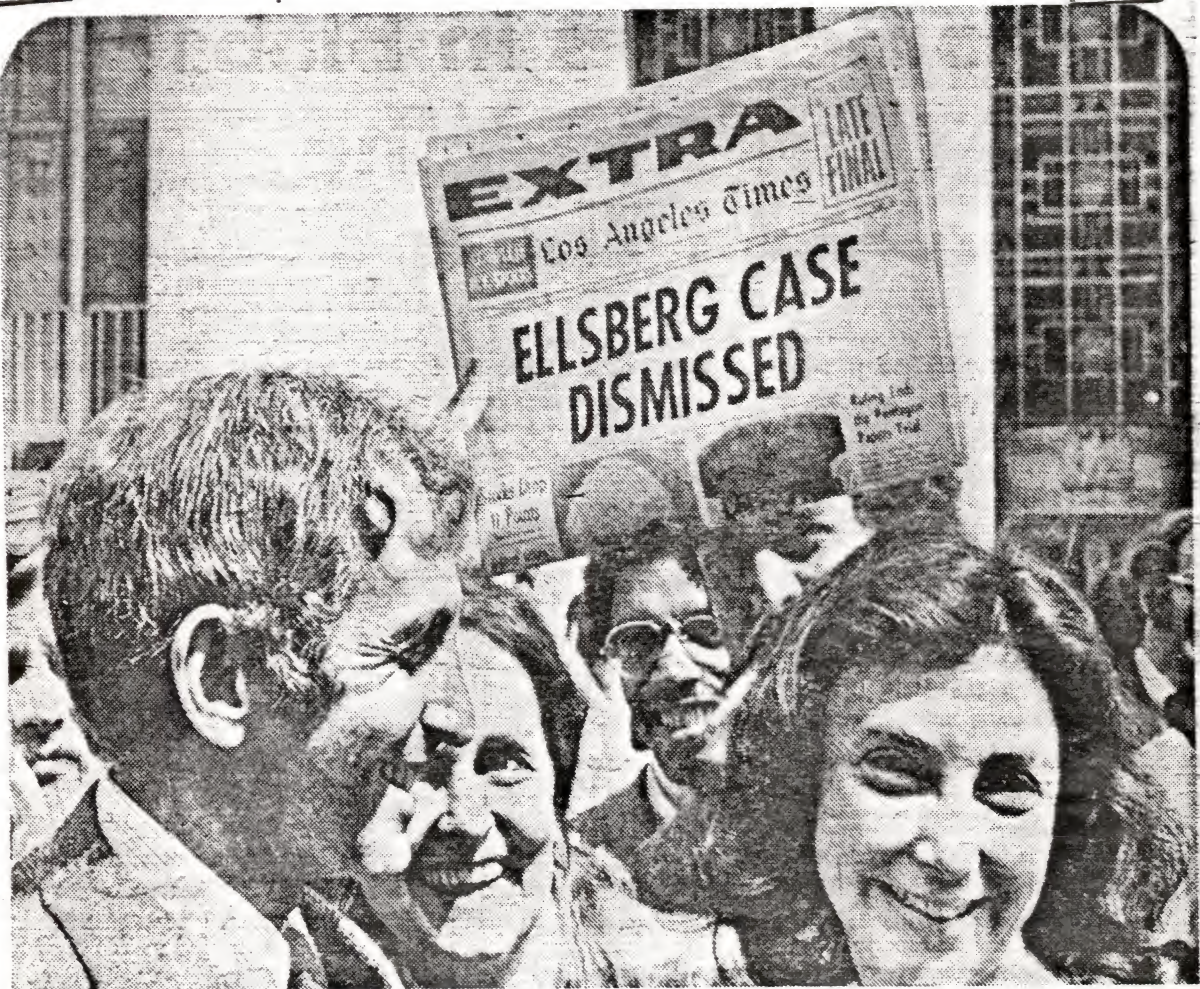
The former attorney general called the trials "a tragedy from every standpoint — at best a reflection of very poor judgment, at worst malicious prosecutions."

Asked if he thought there would be any similar trials in the future, Clark said: "It would seem that Watergate would cause a cessation of this kind of excess by this administration."

Goodell, now a private attorney in New York, said he considered most trials under the federal conspiracy law "an admission that the government has nothing substantive to prove."

But Goodell noted reports that administration officials including those who spearheaded the prosecution of Ellsberg, the Berrigans and the Chicago Seven, may be tried for conspiracy themselves in connection with the Watergate break-in and related political campaign violations.

"We could well have the irony," he said, "of the conspiracy law being turned the other way."



Daniel Ellsberg is shown with his wife Patricia after California decision that set him free, although free is a rather ironic word to use in connection with the case. Costs to the defense were almost \$1 million; for the prosecution it was possibly three times that amount.

2 QUESTIONS OPEN IN ELLSBERG CASE

Grand Jury Meets Tuesday
to Consider Break-in

By STEVEN V. ROBERTS

Special to The New York Times

LOS ANGELES, June 2 — A Los Angeles County grand jury will open an investigation Tuesday into the break-in at the office of Dr. Daniel Ellsberg's psychiatrist, and it has two main questions to explore: Who knew about the break-in before and after it happened, and was their conduct criminal?

"We are interested in whether or not there was a conspiracy to commit the crime of burglary or malicious trespassing," District Attorney Joseph P. Busch said in an interview. "We know a certain group had certain authority to do a certain thing. Whether that amounted to criminal activity depends on what the witnesses have to say."

Already, however, there have been important conflicts in testimony that might bear on the question of conspiracy.

The five men who have admitted staging the break-in on Sept. 3, 1971, have all been granted immunity from prosecution here, so the only real interest focuses on higher-ups.

Ehrlichman and Plumbers

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National Security Issue

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The first witnesses on Tuesday are likely to include Dr. Fielding and Dr. Ellsberg, and will establish the fact of the break-in. On Wednesday the witnesses will probably include Hunt and two of his accomplices, Bernard Barker and Eugenio Martinez, all of whom were convicted for their roles in the Watergate break-in almost a year after the Beverly Hills incident.

The investigators then hope to hear from such witnesses as Mr. Ehrlichman, Mr. Krogh, Charles W. Colson, former White House counsel, and David Young, another member of the plumbers. But all of them are re-assessing their willingness to appear, and if they do not come voluntarily, the subpoena process may be long and difficult. Thus the grand jury investigation is likely to take at least several weeks.

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2 QUESTIONS OPEN IN ELLSBERG CASE

Grand Jury Meets Tuesday to Consider Break-in

By STEVEN V. ROBERTS
Special to The New York Times

LOS ANGELES, June 2 — A Los Angeles County grand jury will open an investigation Tuesday into the break-in at the office of Dr. Daniel Ellsberg's psychiatrist, and it has two main questions to explore: Who knew about the break-in before and after it happened, and was their conduct criminal?

"We are interested in whether or not there was a conspiracy to commit the crime of burglary or malicious trespassing," District Attorney Joseph P. Busch said in an interview. "We know a certain group had certain authority to do a certain thing. Whether that amounted to criminal activity depends on what the witnesses have to say."

Already, however, there have been important conflicts in testimony that might bear on the question of conspiracy.

The five men who have admitted staging the break-in on Sept. 3, 1971, have all been granted immunity from prosecution here, so the only real interest focuses on higher-ups.

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—the real criminals'—

By Anthony J. Russo

In our trial we showed this country something about our system. This ruling class is much more vulnerable than I ever dreamed it was before. All you have to do is draw back the curtains and show them for what they are—they really dance. That is something for us to think about.

The Pentagon Papers say that the war—many people believe it started in 1961; some believe it started in 1965—started in 1945. It was a people's war against imperialist aggression. The Americans were no different from the French except that they had more money and more bombs. The Pentagon Papers show that Ho Chi Minh wrote letters to the American President in 1945 and quoted the Atlantic Charter because the Atlantic Charter was signed by the Americans in 1941, and it said: "We support the right to self-determination around the world." That's what it said. Ho Chi Minh was writing a letter to the American President saying that is what we're all about. He never received an answer.

To sum it all up, the Pentagon Papers say American foreign policy was that kind of policy which attacks but at the same time screams that it is the victim. We were told that we were going there for democracy. All those GIs who went over there to shed their blood — Black and Chicano GIs who shed their blood much out of proportion to the whites, American GIs were told to destroy the enemy of self-determination because they were told that North Vietnam was invading. If they still want us to destroy the enemies of self-determination we have to turn our faces. We have to look from the East to the West and when we look to the West we have to look to Washington.

So in a nutshell that is what the Pentagon Papers show. We were not charged with giving the papers to **The New York Times**; we were charged with conspiracy, espionage, theft, and the conspiracy period ended in September 1970 in the indictment. So what they did was they took the whole phenomenon of the Pentagon Papers and they cut it right in half, and in the courtroom we were not allowed to talk about why the Pentagon Papers were given to **The New York Times**. They wouldn't let us talk about that. They didn't let us talk about intent; they didn't let us talk about war crimes in the Pentagon Papers.

Today the editorials are saying that justice was done. Well, justice was not done and justice will not be done until the Pentagon Papers are used for what they were meant to be used for: as evidence in war crimes trials.

The Pentagon Papers investigation which was set up in the White House when the leak happened in the summer of 1971, that investigation led to the group of people organized and directed by Egil Krogh. Now they've got Fred Buzzard in the White House. Buzzard testified at our trial for the government. At that time he was general counsel for the Department of Defense. Do you realize that that man, an ex-aide to Senator Strom Thurmond, is now in charge of Mr. Nixon's Watergate affairs in the White House? He came to our trial and he lied out of both sides of his mouth.

I think we should keep the trial going but we have to indict the real criminals and put them on trial. We are right on the verge of being able to do that. We should set up impeachment centers all over this country. Some say that we'll then have Spiro Agnew... we'll impeach him. There is no person who can be the prosecutor properly except all of us—every person has to be the prosecutor. Thank you.

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Cox Allows Hunt to Talk To L.A. Jury

By George Lardner Jr.

Washington Post Staff Writer

Special Watergate prosecutor Archibald Cox yesterday authorized the appearance of three imprisoned Watergate conspirators before a California grand jury investigating the break-in at the offices of Daniel Ellsberg's psychiatrist.

The three, E. Howard Hunt, Bernard Barker and Eugenio Martinez, are now in federal prison in Danbury, Conn., for their part in last year's burglary at the Democratic National Committee headquarters at the Watergate complex.

Cox said he approved their temporary release for grand jury interrogation after a meeting here yesterday morning with Los Angeles County District Attorney Joseph Busch.

"We are an independent investigation and we will proceed at our own rate," Busch told reporters at Los Angeles International Airport yesterday afternoon on returning from the three-hour conference.

Hurrying to review all the Watergate-related investigations before any major new steps are taken, Cox reportedly had intended to ask Busch at the conference to hold back on any immediate indictments.

In a prepared statement issued here, however, Cox said only that he had made "no request" for a delay in the West Coast inquiry.

Busch said it would start on schedule Tuesday. Until yesterday, the Bureau of Prisons apparently had refused to release the three witnesses.

"It was a special situation," an aide to Cox said. He said the bureau simply wanted to make sure the move had Cox's approval. "After talking with

Busch," the aide said, "we agreed."

Busch said he did not know precisely when the three men would be called. He declined to say whether former presidential adviser John D. Ehrlichman would also be called to testify.

"I really shouldn't go into that," Busch said.

The Los Angeles inquiry involves the Sept. 3, 1971, burglary at the offices of Dr. Lewis Fielding by a team headed by Hunt and another Watergate conspirator, G. Gordon Liddy.

The two were working for the White House at the time as members of a secret unit organized at President Nixon's direction to investigate the leaks of the Pentagon Papers and other information that alarmed the administration.

Ehrlichman has told the FBI that he learned of the break-in only after it occurred. But former CIA Deputy Director Gen. Robert Cushman, now Marine Corps commandant, has said that it was Ehrlichman who called the CIA in

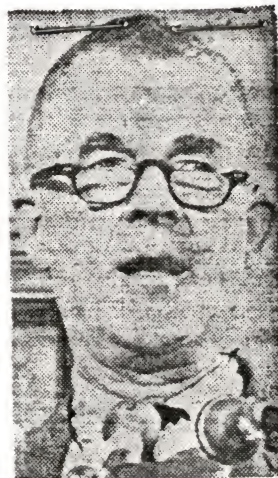
July of 1971 and requested that CIA assistance—chiefly spy paraphernalia—be furnished to Hunt.

Hunt told a federal grand jury here that he hired Barker and Martinez in Miami for the job. All three have been given immunity from prosecution under California law in return for their testimony.

In authorizing their release to testify on the West Coast, Cox said that he and Busch had agreed on "full cooperation" in their investigations.

Sworn in only last Friday, Cox is also planning to meet shortly with Sen. Sam J. Ervin Jr. (D-N.C.), chairman of the Senate's special Watergate investigating committee.

The Washington Post reported yesterday that Cox had asked the committee, through chief counsel Samuel Dash, to halt its hearings on the grounds that they might jeopardize future trials.



ARCHIBALD COX

... no request for delay

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Cox confirmed meeting with Dash Wednesday to discuss, among other topics, "the risk of serious damage to investigations and any resulting prosecution, and the various possible ways of reducing the harm."

But he said "there was no mention whatsoever, and I have never considered for a moment, court action to have them [the hearings] stopped." One Senate source had told The Post that Cox had mentioned the possibility of court action.

Dash had no comment on the "exploratory discussion" beyond stating that "the quoted portions" of the Post's account did not "accurately" reflect what he and Cox had said.

Ervin told Washington Post special correspondent Joe

Pichirano in Winston-Salem, N.C., Thursday night that he has no intention of postponing the hearings in any event. "The committee," Ervin said, "has the same powers under the Constitution to conduct the hearings that the courts have to institute prosecution."



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FOR IMMEDIATE RELEASE
FRIDAY, JUNE 1, 1973

SP

Special Watergate Prosecutor Archibald Cox issued the following statement today:

At my request, Los Angeles County District Attorney Joseph Busch came to Washington today to confer with me and my staff concerning the Los Angeles County Grand Jury investigation into the burglary of the office of Dr. ^{Daniel} Ellsberg's psychiatrist in Beverly Hills, California.

As a result of our meeting, Mr. Busch and I agreed that full cooperation would exist between the Los Angeles County inquiry and the many investigations under way under the direction of the Special Prosecutor.

No request was made by me to delay the Los Angeles proceedings. Furthermore, I have authorized the U.S. Bureau of Prisons to make available for testimony before that grand jury the three men who were earlier convicted in the Watergate burglaries -- E. Howard Hunt, Eugenio Martinez and Bernard Barker.

All three are now in federal prison in Danbury, Connecticut.

W. J. Felt

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E. W. Felt

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Letters to The Times

Danger of Trying 'Near Frivolous Cases'

Your editorial (May 13), "And Justice Has Been Done," on the Pentagon Papers case is sound, but it does not go far enough. The Ellsberg-Russo case is only one in a series of near frivolous cases in which the government has sought to convict "dangerous radicals" and has failed repeatedly to obtain convictions upon the principal charges.

I cite as examples, the Chicago Seven conspiracy trial; the Berri-gan brothers case; and, of course, the absurd Dr. Spock circus. The question arises whether these people were brought to trial and acquitted because of incompetence within the Justice Department, or whether such indictments should have been sought initially.

Now the frightening aspect of this concerns the willingness of the lawyers in the Justice Department to prosecute related cases in the future with as much vigor as they expended heretofore. By proliferating the resources of the FBI and the Justice Department it is reasonable to suppose the men and women in these agencies will give a long, hard look at future borderline cases that require their full efforts to obtain convictions.

I am concerned because self-serving politicians who continue to cry wolf may impede serious prosecutions where a question of real national security is at stake.

PETE TORGE
Redondo Beach

Mr. Felt _____
Mr. Baker _____
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Games The Pentagon Plays

By Les Aspin

The author, a Democratic congressman from Wisconsin, is a member of the House Armed Services Committee. His article is excerpted by permission from the forthcoming summer issue of Foreign Policy magazine.

THE OVERRIDING issue in defense can be reduced to a simple, straightforward question rarely discussed in Congress: How much is enough? To have more than enough means wasting the taxpayers' money; to have less than enough means risking national security.

To avoid facing the real issues, the Pentagon has devised a number of diversionary tactics — ploys that it uses when briefing congressmen or testifying before congressional committees. The Pentagon briefing has not been called a new art form for nothing: Not only is it slick and professional, complete with color slides and charts, but it is so devised as to divert the congressmen's attention away from the real issues in defense to a morass of side issues. There are basically five techniques that the Pentagon uses.

"The Comparison Game"

TO AVOID TALKING about how much is enough, the Pentagon talks about how much the Russians have or what the Russians are doing. If they have more, we have to have more. If they are building more, to keep our lead we have to build more. Never mind that we already have many times the amount needed for assured destruction: If the Russians have got a hundred new holes in the ground, that means that they are building more missiles and we have to build more missiles.

Sometimes this comparison game is difficult to play, because about 85 per cent of the comparisons between the Soviet Union and the US forces show

us out ahead. It won't help the Pentagon to compare number of warheads, for example—the United States has 5,900 and the Soviet Union has only 2,500. Nor would it do to compare accuracy of weapons; our weapons are more accurate. Nor would it do to compare reliability; U.S. missiles are more reliable. So it is necessary to compare things in which we are behind. Megatons per warhead are one possibility because there the Soviet Union is ahead. Thus, even though megatons are not very important (doubling the megatonnage will increase a missile's destructive capacity by only about a third) the Pentagon compares megatons. The Pentagon also compares missile launchers—the Russians have more.

The Pentagon likes to have Congress play these comparison games, even though such comparisons are usually irrelevant. The Russians often have different types of forces just because they have different geographical and There are mixed feelings all around. After all, didn't both sides—government and defense alike—want this case to be going on during the 1972 presidential campaign? The defense was planning to accomplish some education on the war in Vietnam, the prosecution to take out after a major strain of illegality. (During the campaign, in fact, it will become a common Republican theme to compare Ellsberg's "theft" to the burglary and bugging of Democratic headquarters at the Watergate.) Defense attorneys will eventually concede that they pressed the wiretap appeal primarily because they did not trust the defendants' fate in the hands of the first jury and hoped that a delay of several months would require selection of a new one. It eventually does.

Dan Ellsberg carries a hairbrush in his briefcase so he can always prepare quickly for the television ~~camera~~ on

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the courthouse steps. There's another ~~brisk~~ stashed under the defense table—can it be that somebody there is pretending to tie his shoelaces but really primping for the jury?

THE MOST POPULAR man in the courtroom is the judge, no doubt about it. The new jurors are sworn in on Jan. 17 and immediately begin cooing over him. He could say "habeas corpus," and if he did it with that twinkle in his eye, and with his hands folded against his cheek, and the customary slide of his chair to the jury-box end of the bench, it would turn them on. (One of the television drawings that the viewers will never see captures him perfectly in this pose.)

The jurors should perhaps be told that while Matt Byrne is a bachelor, he is spoken for—many times over. In fact, we learn to watch for one of his girlfriends to show up in the courtroom on a Friday. That is generally a sign that we may get out a little earlier than usual. (He never does learn, though, how every afternoon minute counts when you are on the West Coast and trying to meet deadlines in the East.)

This is Byrne's first major politically oriented case as a federal judge, and there are moments when he seems to be having a very unpleasant time up there. Word has it he has worked very hard, and his chambers are so consumed with issues of "national defense" and "conversion of property" and "conspiracy to defraud" that at one point, his two law clerks stop speaking to each other over a policy disagreement. The judge is said to be an ambitious man, eager for bigger strategic needs. Congress listens to briefings about how many more submarines the Russians have without once hearing the briefer explain that the Russians are building a large submarine fleet to interdict the U.S. naval supply lines in a time of war, and that the United States does not need so many submarines because the Russians do not have long naval supply lines. But the Pentagon does not explain comparisons, it only makes them.

"Accentuate the Negative"

THE NAVY IS probably better at this than anybody else in the Pentagon: When necessary, the Navy can come up with a whole new set of statistics to reinforce an otherwise questionable argument. For example, the Navy is currently trying to show

that the Soviet fleet is increasing so dramatically that it may soon endanger the U.S. Navy on the high seas. To help prove this it has invented a statistic called "ship days in the Mediterranean." Nobody used to talk about "ship days," but now we do.

One ship spending one day in the Mediterranean is a "ship day in the Mediterranean." If the United States has a single billion-dollar carrier in the Mediterranean, with all its planes and firepower, that's one "ship day in the Mediterranean." The Soviet Union can launch two rowboats armed with machine guns and have two "ship days in the Mediterranean." This is a little facetious, but not very. Russian ships in the Mediterranean of all classes except cruisers are much smaller than their American counterparts—and no Russian ship anywhere approaches one of our attack carriers in size or firepower.

Other statistics used are not quite so phony, but are not completely honest either: The Army compares the number of divisions the United States and NATO have in Europe with the number the Russians and the Warsaw Pact have. The Russians have more. A Russian division is about one-third the size of a U.S. division and has about one-third the firepower, but that is left unsaid.

In Pentagon translation, this means I will support your questionable weapon system if you support mine. Each service has at least one major ~~major~~ weapon that is vulnerable in the sense that there are people who, for generally excellent reasons, question its usefulness. When this happens there is always the slight possibility that Congress might actually cut the funds for it. Usually this vulnerable weapon is a very expensive prestige item that performs a traditional role for that service—a nuclear carrier for the Navy, a B-1 bomber for the Air Force, a Main Battle Tank for the Army. When any one of these weapon systems comes under attack the call goes out to circle the wagons and each service eloquently defends the others' pet projects.

In private, of course, there may be a different point of view. The Air Force has done studies that show that an aircraft carrier is four to seven times more expensive than a land-based wing of aircraft. (Navy studies of the same subject show that the costs are about the same.) If the choice ~~were put~~ on buying either a carrier or another Air

Force wing, then service ~~solidarity~~ might break down. But such a choice is never discussed before Congress. All the services will support the Navy's carrier and then all the services will support the Air Force in whatever it wants.

Sometimes this game is played within a service as well as among the services. The Navy, for instance, is sharply divided into the surface navy, the air navy and the submariners. Those in navy air are the only ones really interested in a new carrier. But by mutual back-scratching, such as a trade-off for Trident, the whole Navy can be brought aboard to support the carrier. Ultimately the American public will find that it has bought a new carrier although even within the military establishment only a small percentage of the people really think it is a wise investment.

"The Quantity-Quality Switch"

WHEN THE PENTAGON is arguing for a specific weapon, such as the Trident or the B-1 or the F-14, it emphasizes quality. Never mind that the F-14 is four times more expensive than the F-4 it is replacing. The Navy says that it is a much better plane and, therefore, well worth the money. However, when it comes time to replace F-4s with the F-14s, we discover that the Navy wants to replace them on a one-for-one basis. If the new planes were that much better, you might have thought that we could do with fewer of them—but now the Navy is arguing quantity.

This game is also played when comparing our forces with those of the Russians. NATO's tactical air forces are much better than the Warsaw Pact's: They have greater payload, greater loiter time, longer pilot training. Indeed, we are paying for this edge in quality. But whenever the Pentagon presents a briefing on the NATO and Warsaw Pact forces, it compares the Warsaw Pact's air force with NATO's air force as if the planes were equal.

"Heads I Win, Tails You Lose"

THE OBJECT OF this game is for the Pentagon to place itself in a position to argue for an increase in the Defense Department budget no matter what happens. It goes this way: If the Soviet Union increases its defense budget, that means that the United States must also increase its budget. But if the Soviets reduce their defense

budget, our high expenditures on defense have been successful, so we ought to increase our defense budget even more.

We saw this game played during the SALT negotiations: The administration argued that without an agreement we needed to spend money to update and protect our strategic forces. But it turns out that with an agreement we have to spend money to update and improve all of the forces not covered by that agreement. In addition, the administration argues that we have to spend more money to create new weapons systems as "bargaining chips" for the SALT talks, although the weapons systems thus created are of dubious military value and exist solely to be negotiated away.

The best current "Heads I Win, Tails You Lose" game is being played with the U.S. troops in Europe. When there was a crisis in Europe, such as Berlin in 1961 or Czechoslovakia in 1968, that was clearly not the time to reduce our troops there. However, now that there is a relaxation of tensions the Pentagon argues that our policy of firmness has paid off and that reducing our forces at this time would jeopardize the peace in Europe. If you cannot reduce troops in Europe when there is crisis and you cannot do it when there is detente, when can you do it?

The Power of a Congressman

THESE FIVE are not the only games the Pentagon plays with Congress, but they are some of the major ones. What's more, the Pentagon is winning these games—winning in the sense that through them the Pentagon establishes the way Congress looks at the defense budget, establishes the parameters of the debate in Congress, and determines what factors are in a congressman's mind when he votes on defense issues.

Against these Pentagon games an individual congressman is nearly powerless for he has no leverage—nothing he can withhold to force the Pentagon to do what he wants. On a committee as pro-military as the House Armed Services Committee (approximately 37-6, hawks to doves), the Pentagon has no particular reason even to care about one vote.

In committee hearings a congressman can question a witness for only five minutes—and any witness can filibuster for that long. In questioning witnesses the committee staff is not helpful to hostile members, and a con-

into the all-important closed hearings. A committee member can write letters to the Pentagon and, because he is on the committee, they will reply—but this means only that they will send back a piece of paper, not necessarily that they will answer the questions. Eventually an individual congressman learns that it is hopeless to try to raise the larger issues, and that if he wants to have any impact at all he must focus on the smaller, less philosophical, more specific issues such as a particular defense contract.

If a change is to come, and if the Pentagon is going to be made to address the basic questions, it is up to the whole Armed Services Committee. That committee has the authority to get any kind of information it wants from the Pentagon simply by holding up the defense budget. The tactic is simple: Hearings on the budget are not started until the right issues are discussed.

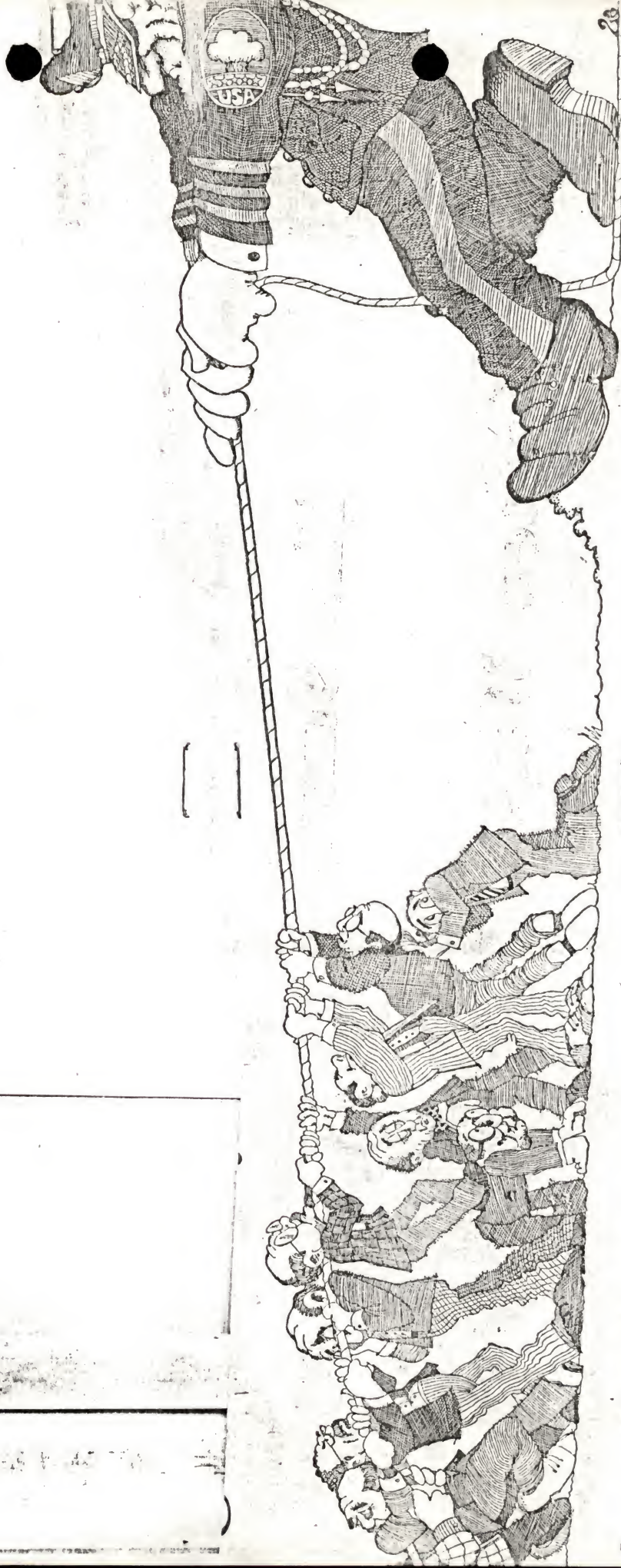
Why Congress Plays Along

WHY THE ARMED Services Committee does not do this has a lot to do with who is on the committee and why.

The constituency-oriented membership of the House Armed Services Committee helps to explain why, for example, in the FY 1972 budget the committee spent less than an hour and passed without amendment the \$2.5 billion "Support to Free World Forces" appropriation (virtually all for Indochina) while the \$1.9 billion request for "military construction," with its massive pork-barrel implications, took 12 meetings over a period of three weeks. It also helps to explain why there are so few votes on the House Armed Services Committee to cut the defense budget. Amendments to cut the defense budget, which receive 25 to 30 per cent of the votes on the House floor, get a little more than 10 per cent of the votes in committee.

This is not to say that the committee is always a pushover for the Pentagon. At times it actually does get tough with a defense contractor — most notably in the nonhardware parts of the research and development budget or some aspects of manpower. But basically the committee, because of its composition, views a rising defense budget with something less than alarm. If it worries at all about the military budget, it is mainly about whether there will be trouble with it

on the House floor. The committee does not force the Pentagon to stop playing games and to address the issue of how much is enough because the committee itself is not interested in pursuing that question and is less than enthusiastic about the House pursuing the question. The end result is that how much is enough is never really discussed in the House, although a number of congressmen — most of them not on the Armed Services Committee — would like to.



Drawn by John T.

Mr. Felt _____
 Mr. Baker _____
 Mr. Callahan _____
 Mr. Cleveland _____
 Mr. Conrad _____
 Mr. Gebhardt _____
 Mr. Jenkins _____
 Mr. Marshall _____
 Mr. Miller, E. S. _____
 Mr. Soyars _____
 Mr. Thompson _____
 Mr. Walters _____
 Tele. Room _____
 Mr. Kinley _____
 Mr. Armstrong _____
 Mr. Bowers _____
 Mr. Herington _____
 Ms. Herwig _____
 Mr. Mintz _____
 Mrs. Neenan _____

Notes From	
the	
Ellsberg Trial	
By Sanford J. Ungar	
Ungar, a staff writer, covered The Pentagon Papers trial for The Washington Post and is the author of "The Papers and the Papers."	

The Washington Post Times Herald _____
 The Evening Star (Washington) _____
 The Sunday Star (Washington) _____
 Daily News (New York) _____
 Sunday News (New York) _____
 New York Post _____
 The New York Times _____
 The Daily World _____
 The New Leader _____
 The Wall Street Journal _____
 The National Observer _____
 People's World _____

Date MAY 27 1973

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LOS ANGELES

IT IS MONDAY, June 5, 1972. "I'm just sick this morning," says a woman in the corridor outside the courtroom of U.S. District Judge W. Matt Byrne Jr. She is pointing to a banner headline in the morning paper which announces that Angela Davis has been acquitted, up north in San Jose, of murder and kidnaping charges. Much of California's establishment, including Gov. Ronald Reagan, had long since decided that Davis was guilty, and so there is a distinct feeling here today that the forces of order have suffered a serious blow—inflicted by, of all things, the jury system.

This is more or less the starting point for another one of those quasi-legal, quasi-political adventures, the Pentagon Papers trial, as Byrne is convening hearings on the final pre-trial motions.

The U.S. Marshal for the Central District of California, Gaylord Campbell, is certain that things will proceed calmly. "It's not like Dillinger, you know," he tells a reporter new on the scene. "The man [Ellsberg] is on the street."

"The man" seems to have aged more than the year that has passed since the documents were published and he was indicted. He is dapper in a blue-cord suit, but a bald spot shows on the back of his head. (Later he will learn how to comb over that.)

Defense attorneys argue for hours, seeking early dismissal of the charges on a variety of grounds and a hearing on whether Ellsberg and Russo might be the victims of "selective prosecution." Chief prosecutor David R. Nissen is succinct; he insists, with a straight face, that "the prosecutor's motives are all filtered out through the grand jury system."

Some of the folks who will become regulars begin coming to court today. In the back row, for example, is Mr. Sullivan of the Los Angeles field office of the FBI, a short man with a ruddy face and an infuriatingly small handwriting—difficult to read if you get a glimpse—who comes and goes through the door quite often. Eventually, he will move to the prosecution's "family row" in front, and we will learn that he is a jolly fellow called "Sully" and that he probably knows more about Dan Ellsberg than Dan Ellsberg does.

In between proceedings in the Pentagon Papers case, Byrne handles other chores. Today, June 19, while some of the spectators are knitting and others are out for a coffee break, he sentences a 26-year-old convicted of draft evasion to three years' probation.

Ellsberg, apparently moved by the young man's plight, rushes out of the courtroom to talk with him, his brother and mother—all of them elated that the young man will not be going to jail. They don't seem to know who Ellsberg is, which appears to bother him, and they seem to want to be alone, which Ellsberg does not appear to notice.

THERE IS A TENSE silence over the courtroom whenever Charles Goodell, formerly a United States senator and now one of Ellsberg's lawyers, rises to speak. Two of his former aides, now on the trial defense staff, fidget uncomfortably and exchange glances because Goodell sounds as if he is giving a Senate floor speech instead of a legal argument. It is too loud, too staccato, too rhetorical. For example, in responding to a prosecution accusation that the defense had leaked previously unpublished parts of the Pentagon Papers to Jack Anderson, he accuses Nissen of trying to "besmog this chamber with poisonous vapors."

Goodell's New York law firm charges a large amount for his time, but Ellsberg will later decide that it is not worth it and refuse to authorize payment of the Goodell bills. When the trial resumes after a several-month hiatus, caused by a battle over government wiretapping of a defense attorney or consultant, Goodell is no longer there. He is invited for one day toward the end as a spectator.

Prosecutor Nissen is perhaps the quietest individual ever to appear in an American courtroom. When the judge demands that each side provide its formal interpretation of a particular clause of the espionage act, Nissen simply says, "I don't understand what Your Honor's problem is." When Nissen loses patience with defense motions, he merely declines to respond. (At the very end, as the case starts to go down the drain because of extraordinary government actions against Ellsberg, he will tell Byrne that the defendant "has no constitutional

right not to have his psychiatrist's office burglarized.")

The prosecutor runs a tight ship. In contrast to the chaotic defense side of the courtroom, the government table never has a piece of paper out of place. Nissen and his two associates invariably file in just two or three minutes before court is scheduled to begin. They never touch their pitcher of water.

Nissen is so neat and impeccably dressed and thoroughly pulled together that he becomes an obvious target for stares of amazement. He seems to plaster down his short black hair with greasy kid stuff (a theory develops that one juror, a Vietnam veteran, suddenly begins to imitate this hair style at mid trial), and one young woman spectator tries to ride the elevators with him to determine whether he shaves between his eyebrows. On his feet, whether arguing or questioning, he cuts the air with his hands as if he is mincing a giant onion into a million pieces; when moving in for the kill, he begins to tap his fingers on the lectern.

Some feel that the jury might mistake his efficiency for unmitigated hostility, but Nissen doesn't seem to worry about such matters. Nor does he seem to fret about alienating the judge, his old boss in the U.S. Attorney's office for Los Angeles. On the contrary, there are times when it looks certain that if Byrne doesn't shape up, the prosecutor might hold him in contempt at the end of the trial.

IT IS AUGUST 9, 1972, and the trial is over—for a while at least—because Supreme Court Justice William O. Douglas, after a hearing in Yakima, Wash., said that a suddenly discovered government wiretap raises serious procedural issues (for example, whether the defense is entitled to help the court determine its relevance) which must be resolved before it continues.

There are mixed feelings all around. After all, didn't both sides—government and defense alike—want this case to be going on during the 1972 presidential campaign? The defense was planning to accomplish some education on the war in Vietnam, the prosecution to take out after a major strain of illegality. (During the campaign, in fact, it will become a common Republican theme to compare Ellsberg's "theft" to the burglary and bugging of Democratic headquarters at

the Watergate.) Defense attorneys will eventually concede that they pressed the wiretap appeal primarily because they did not trust the defendants' fate in the hands of the first jury and hoped that a delay of several months would require selection of a new one. It eventually does.

Dan Ellsberg carries a hairbrush in his briefcase so he can always prepare quickly for the television cameras on the courthouse steps. There's another brush stashed under the defense table—can it be that somebody there is pretending to tie his shoelaces but really primping for the jury?

THE MOST POPULAR man in the courtroom is the judge, no doubt about it. The new jurors are sworn in on Jan. 17 and immediately begin cooing over him. He could say "habeas corpus," and if he did it with that twinkle in his eye, and with his hands folded against his cheek, and the customary slide of his chair to the jury-box end of the bench, it would turn them on. (One of the television drawings that the viewers will never see captures him perfectly in this pose.)

The jurors should perhaps be told that while Matt Byrne is a bachelor, he is spoken for—many times over. In fact, we learn to watch for one of his girlfriends to show up in the courtroom on a Friday. That is generally a sign that we may get out a little earlier than usual. (He never does learn, though, how every afternoon minute counts when you are on the West Coast and trying to meet deadlines in the East.)

This is Byrne's first major politically oriented case as a federal judge, and there are moments when he seems to be having a very unpleasant time up there. Word has it he has worked very hard, and his chambers are so consumed with issues of "national defense" and "conversion of property" and "conspiracy to defraud" that at one point, his two law clerks stop speaking to each other over a policy disagreement. The judge is said to be an ambitious man, eager for bigger and better offices to hold. One might expect that to lead him to put some of his decisions on the momentous issues in the case on paper, so he can break into the lawbooks. But not one of these decisions is handed down in writing. He is constantly demanding case-law precedents from the lawyers for anything

they want him to do, but he refuses to make any of his own. Maybe that is the real path toward satisfying ambitions, especially if you are a Democrat and the Republicans control all the access.

Some of the prosecution testimony and defense cross-examination of government witnesses is maddening. For a time, one gets the impression that Brig. Gen. Paul F. Gorman—who has been temporarily assigned to the trial by his superiors—will never leave the witness stand. Ever. Today, Jan. 24, he drones on endlessly, seeking to prove the hypothetical proposition at the heart of the espionage case: that if a "foreign analyst" had gotten hold of the Pentagon Papers in 1969, when Ellsberg and Russo first photocopied them, this could have caused grave "injury" to the United States and "advantage" to a foreign power. That proposition had been more or less rejected in 1971, during civil suits against the newspapers that published the documents, but now the country has another try.

From the resources and brass being poured into the prosecution, you know that somebody up top has to care a great deal about convicting Ellsberg and Russo.

JUROR NUMBER ONE, Cora C. Neal, who is just about the first person we see every morning now, looks nasty. Surely she will be the hanging juror, the one who would convict. She even complains about a television sketch artist because he gets pencil shavings on her chair. Now and then, I think I've made eye contact with a juror—in my fantasy existence, which flourishes while I am sitting here endlessly, I become convinced that someone in the second row of the jury box is actually welcoming me back after I've been away for a few days—but not Cora Neal. Just a cold stare.

It is Feb. 8, and Gorman is still on. The delay has been caused by the discovery that the Pentagon and the Justice Department had withheld from the court internal studies of the Pentagon Papers that contradict the basic prosecution premise of their link to the "national defense." The general is trotting out his vocabulary on cross-examination, and today the judge asks him to define his terms: verbiage, generically, transmutation, commonal-

ity, inter alia, ipso facto, genre, modus operandi, coup d'etat, pinnacle, benchmark and carte blanche. "White card" is his literal definition of "carte blanche"; that should clarify things nicely for the jury.

By the way, we will learn later that Mrs. Neal is not the meanie she looks to be. Apparently, each morning, before marching into court, she clowns around in the corridor and lines up all the others in military fashion. She has simply decided that it would be wrong to smile in court, and so she wears a deliberate frown all day. As for her views on the case—"I took a salesmanship course once, and I was prepared to go in there and sell them all on the innocence of Ellsberg and Russo."

"Wow, this place is like a church" is Katherine Barkley's first reaction on arriving in Byrne's courtroom, which has alternating floor-to-ceiling panels of green marble and dark brown wood. It is one of those grandiose, fluorescent-lit rooms where dramatic events occur but the acoustics are terrible, so there are always half a dozen people leaning forward with hand cupped on ear.

Ms. Barkley, Tony Russo's wife but never to be known as "Mrs. Russo," is one of the freest spirits in the whole affair. She is frankly bored with court and often stays home to write poetry. In February, she begins selling organic, meat-free sandwiches to the defense staff, public and press (a 25-cent surcharge for reporters because "you can afford it") as her contribution to the defense fund-raising effort. This grievously offends the blind man with the food concession in the courthouse snack bar, and before long word is passed from the judge, through the marshal, that she should stop. She writes to Byrne, saying "no" and asking if he would like to buy a sandwich.

WHEN EVERYONE first arrived in Los Angeles for the trial last summer, the "Ellsberg people" set up shop in Bunker Hill Towers, a Holiday Inn-like apartment complex downtown, just a few blocks from the courthouse and overlooking the intersection of the Harbor, Hollywood and Pasadena Freeways. The "Russo people" wouldn't go near it, not even for meetings, because they learned that it was the result of an urban renewal project that destroy-

ed an old chicano neighborhood, and there were rumors that it was owned by some "rich Republicans."

By now, however, feelings have mellowed; the Russos have moved in (it says "Barkley" on the door), most of the reporters covering the trial live there, and it is the focus of much of the life created by the event. One morning at the swimming pool, where he has just completed his 40 laps, Dan Ellsberg announces that he is now down to his "Marine weight" and is toying with the idea of coming to court in uniform. Leonard B. Boudin, the chief defense counsel, and his wife Jean never draw the drapes in the living room of their apartment facing the courtyard, so in the evening on the way to the supermarket in Center Tower we can sometimes see Boudin and Ellsberg quarreling or otherwise get some feel for what is coming the next day. Probably one of the best sources of gossip is the man who runs the dry-cleaning concession. And then we can always check the garage to see if someone's car is in its spot.

The worst day to be at Bunker Hill is Feb. 21, when, at about 6:45 a.m., we have a little earthquake. The West Tower sways, the mirror in the bedroom swings and there is a low, eerie grinding sound. For weeks afterward the elevators still do not seem to work properly, and the earthquake, like the "altitude" in Denver, becomes a handy explanation for people's assorted aches and pains.

If there is only one thing that I would like to teach the folks back East about when I get home, it is time zones. Sure, Victor, it's great to hear from you, but do you realize that for me it is 7 o'clock and this is Sunday morning?

IT IS FEBRUARY 27, 1973, and as the defense case opens today, Leonard Weinglass (at least three times, Byrne has called him "Weinstein," just as Judge Julius Hoffman did during the Chicago Seven conspiracy trial) promises the jury that there will be "a long list of very knowledgeable and expert people" as witnesses.

Long isn't the word for it. The defense has several problems in this regard. There are some people who want to testify, for various selfish reasons like getting themselves on the

public record against the war now that it's easy to do so. Ellsberg, a long-time government adviser and researcher and in his time a card-carrying militarist, wants to have powerful, influential people on the witness stand—former Kennedy and Johnson advisers, professors at well-known universities, men who don't look like they're wearing a tie for the first time in a month.

Russo, on the other hand, considers most of Ellsberg's friends and favorites to be "war criminals." He prefers to present people who've been to Hanoi, who have never held a policy-making position with regard to the Vietnam war, who will say some brutal and shocking things to the jury.

The dispute on this issue has been going on for months, and the solution is a rather peculiar compromise: not a few of each, but lots of everything. "Overkill" becomes a favorite description.

Weinglass puts some of the defense contentions with admirable simplicity: "In this country we may freely exchange the books and information which our government produces . . ." The Pentagon Papers contained only "a few isolated military facts which bore no direct reasonable relationship to the national defense . . ." The information in the documents was "necessary to the ongoing debate about Vietnam" in 1969, when Ellsberg and Russo photocopied them.

The first defense witness, retired Adm. Gene LaRocque, has obviously been warned about prosecutor Nissen's cross-examining skills. Asked for all of the notes he made in preparation for testimony, he says he tore some of them up in tiny pieces and flushed them down the toilet at the Biltmore Hotel. We wonder if there won't be a plumber as a prosecution rebuttal witness.

One morning, all the defense researchers and legal workers, mostly in their twenties, who have customarily come to court in sandals and blue jeans, suddenly show up with coats and ties or dresses. This is the result of a meeting the night before in which it was decided that the sloppy defense image desperately needed to be improved. A touchy matter, since one of the implicit principles of the defense is that one should not have an exaggerated respect for rules and regulations.

The costs and ties last less than a week.

SOMETIMES, WHEN prosecution objections to Leonard Boudin's questions have been sustained about 14 times in a row, I want to scream out a suggestion on how he can get the issue past the judge and into the record. One of those times is today, March 13.

Boudin, an early member of the Lawyers' Guild, has an impeccable record for protection of people's civil liberties, and he has been involved in many of the major recent political cases, including the Spock trial and the Harrisburg conspiracy (Berrigan) case. But he is primarily an appellate lawyer, and things certainly do move slowly when he is behind the lectern. Except for Weinglass, in fact, the defense has no experienced trial lawyer on hand. This is the first time for Charles Nesson, the Harvard Law School professor (although the judge seems to like him best of all). Peter Young coins a splendid phrase now and then, but he, too, fumbles often. Dede Donovan is efficient but meek.

For all his procedural difficulties, Boudin turns out to be the clear favorite of the jurors, who love the way he puts his glasses on and takes them off, punctuates his performance with mumblings of "quite" and "precisely" and generally plays Clarence Darrow.

One of the best-known spectators at the trial is a woman, identity unknown, who wears a bright green wig, peace buttons as earrings, and odiferous, tattered clothes with dollar bills pinned on in various strategic locations. She lectures the rest of the audience during long recesses, and one night, after promising to do so, she shows up in the audience on the Merv Griffin Show. At another point she asks Jane Fonda for a kiss and, when refused, settles for an autograph.

"Danny boy," she tells Ellsberg, "the only thing to do is buy the jury."

IT IS APRIL 9, and Nissen asks Tony Russo, on cross-examination, why Russo, Ellsberg and the others who helped them photocopy the Pentagon Papers cut the "Top Secret" markings off the copies. "Because," Russo replies glibly, "the 'Top Secret' marking could scare somebody, if they didn't know how meaningless it is."

Jurors smile. Judge Byrne orders the answer stricken from the record.

Nothing gets harder after a time than an uncomfortable, poorly designed courtroom bench. Normally, the press sits in comfortable chairs at a table in the well of the court. But Judge Byrne has found out that we can overhear supposedly private conferences at the bench that way. Besides, defense consultants need the chairs and the table is a perfect place to put the movie screen on which to show the Pentagon Papers.

We all shift and curse and struggle on the benches, but only three women reporters find relief. They buy cushions—marked "PRESS EXHIBITS 1, 2 and 3" and kept for them by the clerk—and ceremoniously name them in honor of Edmund Karl Heine, the World War II German agent whose espionage conviction was overturned because the information he had revealed was already in the public domain.

GEN. ALEXANDER M. Haig Jr., the Army vice chief of staff, testifies on April 25, and says absolutely nothing. But he is in uniform (a first), and the four stars on each shoulder sparkle. He is the first witness who seems to provide competition with the judge for the jurors' affections.

The puzzle is whether there is any reason for his appearance besides showmanship. He acknowledges, as reporters ride the elevator with him, that he hasn't read the Pentagon Papers. Could it be that the government fears that its case is going down the drain?

By April 27, we've been sitting for a long time and "almost" has become a totally meaningless word. Now the prosecution rebuttal case is starting to drag, and things have been interrupted once again because the prosecution failed to turn over to the court some government investigations of Ellsberg.

But there is hope. Nissen has made a mysterious in camera (secret) filing with the judge, who has rejected it and plans to turn it over to the defense and public this morning. During one of those long pregnant pauses, while all trial participants are huddled at the bench, the press corps begins to speculate wildly about what this could be. Something to do with Watergate? Never. A message offering Byrne the directorship of the FBI, for which he is said to be a leading candidate? Impossible. Another wiretap? Not

at this stage of the trial.

When the judge reveals that it is a memo from the Justice Department, alleging that Watergate conspirators E. Howard Hunt Jr. and G. Gordon Liddy burglarized the office of a Beverly Hills psychiatrist who once treated Ellsberg, there are gasps of disbelief, then uncomfortable laughs, and then a dash for the phones. This is, of course, the beginning of the rather unattractive end of the trial. We put a name to it: Watergate West.

This event is a watershed, seeming to teach that one should believe his own worst suspicions and be skeptical of no outrageous allegation. Because they were all true; as it would turn out, Byrne had been offered the FBI directorship during the trial and he went twice to talk with White House adviser John Ehrlichman about it. And there were new wiretaps. And more.

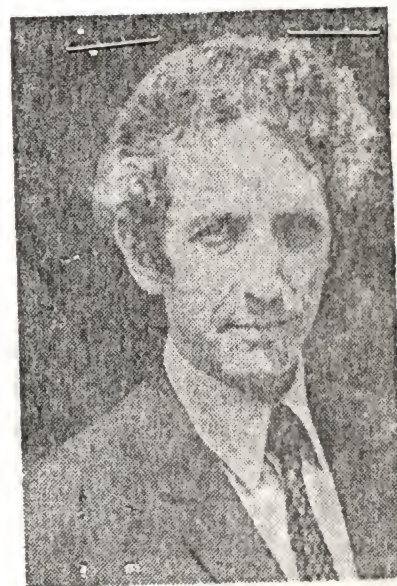
MAY 11, 1973—This time it really is over. In a radio interview, Ellsberg and Russo say it is now time to put "the real criminals" on trial. They feel that the conspiracy was within the government, not against it. "The demystification and desanctification of the President has begun," says Ellsberg. "It's like the defrocking of the Wizard of Oz."



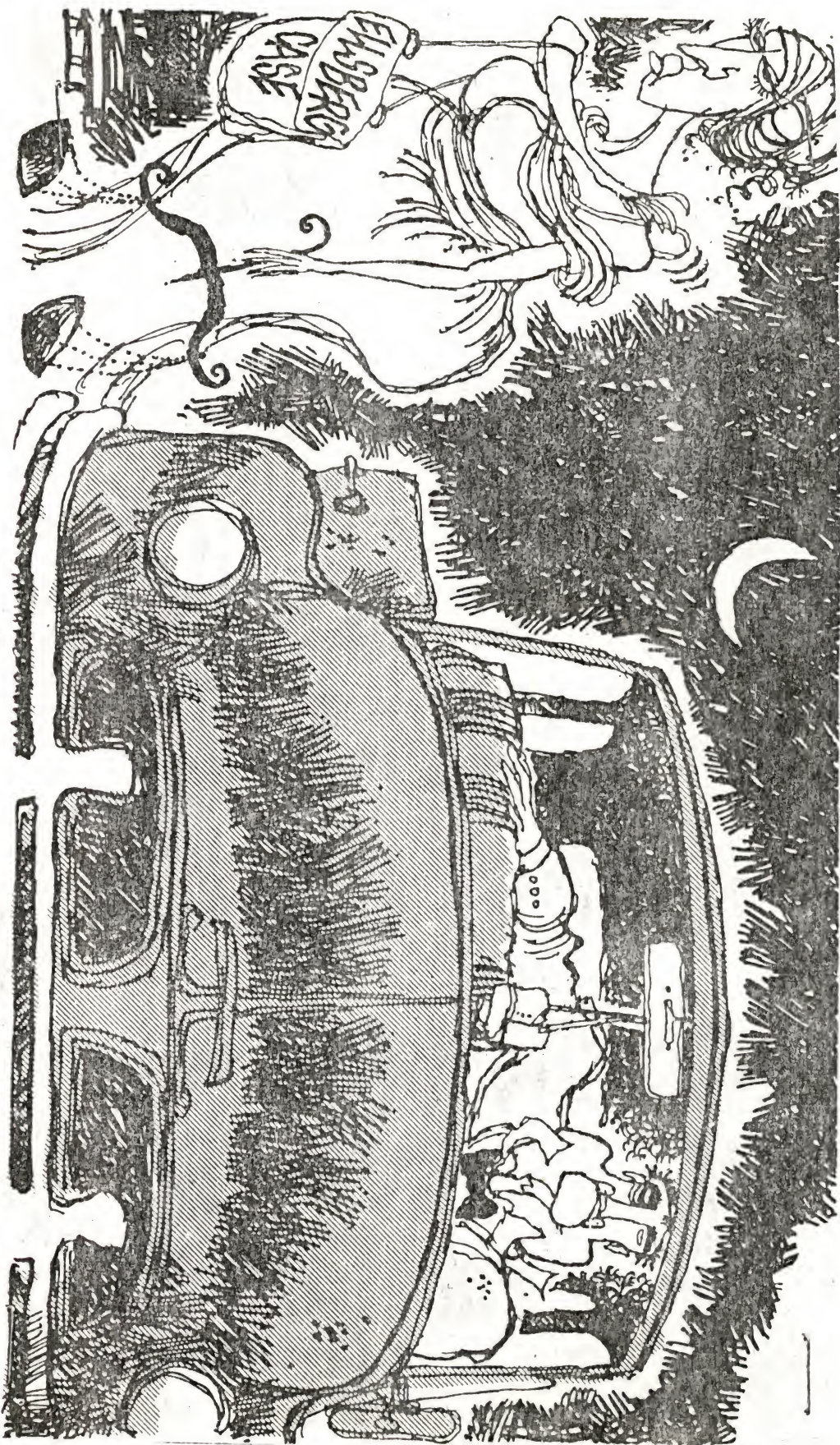
Judge W. Matt Byrne Jr.: He could say "habeus corpus" and it would turn the jurors on.

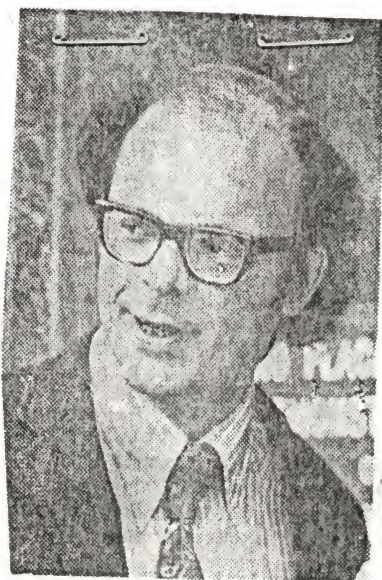


Prosecutor David Nissen: "perhaps the gutsiest individual ever to appear in an American courtroom."



Daniel Ellsberg





Anthony J. Russo Jr.

Mr. Felt _____
 Mr. Baker _____
 Mr. Callahan _____
 Mr. Cleveland _____
 Mr. Conrad _____
 Mr. Gebhardt _____
 Mr. Jenkins _____
 Mr. Marshall _____
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 Mr. Kinley _____
 Mr. Armstrong _____
 Mr. Bowers _____
 Mr. Herington _____
 Ms. Herwig _____
 Mr. Mintz _____
 Mrs. Neenan _____

Prosecution Is Said to Link Haldeman and Ehrlichman To Ellsberg Case Activities

By SEYMOUR M. HERSH
 Special to The New York Times

WASHINGTON, May 26 — Federal prosecutors now have evidence directly linking H. R. Haldeman and John D. Ehrlichman, former top White House advisers, to illegal activities against Dr. Daniel Ellsberg in 1971, sources close to the Watergate investigation disclosed today.

The prosecutors have concluded, the sources said, that those activities were a major factor behind the decision at the White House to cover up the Watergate bugging a year later.

This theory of prosecution, for the first time linking the two aides directly to illegal activities against Dr. Ellsberg, was described by the sources as the heart of the Government's prospective case against Mr. Haldeman, who resigned last month as President Nixon's chief of staff, and Mr. Ehrlichman, who resigned as his top domestic adviser.

The theory was outlined to Archibald Cox, the newly appointed special Watergate prosecutor, in his meeting with the Federal prosecutors this week.

A spokesman for Mr. Haldeman and Mr. Ehrlichman denied that the two men had participated in or covered up any criminal activities while serving in the White House.

The sources disclosed that damaging evidence against Mr. Haldeman and Mr. Ehrlichman was recently presented to the Federal grand jury by David R. Young Jr., the former National Security Council aide. He served as co-director of the so-called "plumbers team" that was authorized by President Nixon to stop leaks of information after publication of the Pentagon papers in June, 1971.

Mr. Young testified to the grand jury after being partial immunity at the prosecutors'.

Mr. E. Eardley

The Washington Post Times Herald _____
 The Evening Star (Washington) _____
 The Sunday Star (Washington) _____
 Daily News (New York) _____
 Sunday News (New York) _____
 New York Post _____
 The New York Times _____
 The Daily World _____
 The New Leader _____
 The Wall Street Journal _____
 The National Observer _____
 People's World _____

Date **MAY 27 1973**

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46 JUN 11 1973

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quest last May 16, the sources said.

The prosecutors further believe, the sources said, that they can prove that key officials of the White House knew at the time they were committed that certain undercover activities against Dr. Ellsberg were illegal. These activities included a break-in in September, 1971, at the office of his former psychiatrist in Los Angeles.

'Umbrella of Security'

The prosecutors are also known to believe, the sources said, that President Nixon's statement last Tuesday on the Watergate cover-up was designed, in the words of one official, "to provide an umbrella of national security for Haldeman and Ehrlichman."

"If ever a statement was drafted to meet a grand jury inquiry, that was it," one Justice Department official said. "They [White House officials] know what the prosecutors have been doing with the witnesses."

Gerald L. Warren, the deputy White House press secretary, denied that Mr. Nixon's statement this week was connected in any way to the White House activities undertaken in response to the publication of the Pentagon papers. The statement said:

"The May 22 statement was clear in its purpose and its scope, which were outlined at the time it was issued. The claim made by the anonymous source in the story that the statement was designed for some other purpose is ludicrous. The White House does not have access to grand jury proceedings."

The prosecutors' thesis, in essence, said sources close to the case, is that the White House participated in covering up the bugging of the Democrats not only for political reasons but so to insure that E. Howard Hunt Jr. and G. Gordon Liddy kept silent about their role on the "plumbers team."

According to a General Accounting Office report released last Saturday, the cover-up included payments of more than \$450,000 to Hunt, Liddy and the five other defendants who were arrested last June 17 in the offices of the Democratic National Committee in the Watergate complex, and to their attorneys.

Liddy and James W. McCord Jr., part of the burglary team, were convicted at a trial in January after Hunt and the four others had pleaded guilty.

Key Operatives

Liddy and Hunt are known to have served as the key operatives for the "plumbers" and were responsible for planning the burglary of Dr. Ellsberg's psychiatrist, although it had been sanctioned at a higher level. In early 1972, both men were transferred to the Republican re-election committee, where they ended up directing the five-man Watergate break-in team.

The first indication of the prosecution's theory was contained in a four-page press release distributed Thursday by Harold H. Titus Jr., the United States Attorney for the District of Columbia, who is the direct superior of the three-man Watergate prosecuting team.

In the statement, Mr. Titus reported that the prosecutors planned to issue comprehensive indictments within 60 to 90 days; he further disclosed that one key witness, later identified as Jeb Stuart Magruder, a former White House and re-election committee aide, had agreed to plead guilty and testify as a prosecution witness.

But Mr. Titus's statement also noted:

"The proposed indictment would focus on the obstruction of justice which occurred after the Watergate arrest on June 17, 1972, but will include criminal activities beginning in 1971, which together with the Watergate break-in motivated the massive obstruction."

In subsequent interviews with Justice Department officials, defense attorneys and White House officials, it was

asserted that the prosecutors had definitely established the link between the 1971 "plumbers" team and the subsequent Watergate cover-up.

Informed sources also said that the Government tentatively planned to indict the ring-leaders of the conspiracy—said to include Mr. Ehrlichman and Mr. Haldeman—and bring them to trial in a group.

"We're going to have our own domestic Nuremberg trial," one official said.

A spokesman for Mr. Haldeman and Mr. Ehrlichman, who are jointly represented by John J. Wilson, a Washington lawyer, described the prosecution's theory linking the 1971 "plumbers" operation to the 1972 Watergate cover-up as "being made up out of whole cloth."

"We remain convinced," the spokesman said, "that there is no criminality on the part of Haldeman and Ehrlichman, and the Government's going to have a hell of a time convicting them."

In court papers filed May 16, however, Mr. Wilson said, "It is possible that one or the other or both [of his clients] may be indicted as a result of the investigation."

In his Watergate statement Tuesday, President Nixon insisted that the plumbers operation "had no connection with the break-in of the Democratic headquarters or the aftermath."

He said that he considered it his "responsibility to see that the Watergate investigation did not impinge adversely upon the national security area." Within a few days of the Watergate break-in, Mr. Nixon said:

"The name of Mr. Hunt had surfaced in connection with Watergate, and I was alerted to the fact that he had previously been a member of the special investigations unit [the plumbers] in the White House. Therefore, I was also concerned that the Watergate investigations might well lead to an inquiry into the activities of the special investigations unit itself."

Still 'Highly Sensitive'

"In this area, I felt it was important to avoid disclosure of the details of the national security matters with which this group was concerned. I knew that once the existence of the group became known, it would lead inexorably to a discussion of these matters, some of which remain, even today, highly sensitive."

"I wanted justice done," Mr. Nixon added, "but in the scale of national priorities with which I had to deal."

As part of his concern, Mr. Nixon explained, he initially attempted to prevent word of the Hunt and Liddy activities against Dr. Ellsberg from being transmitted to the Los Angeles court where Dr. Ellsberg was on trial for his involvement in releasing the Pentagon papers.

The Hunt-Liddy burglary operation was first made known to the Federal prosecutors by John W. Dean 3d, the former White House counsel, in a meeting in mid-April and relayed by them to the Justice Department for transmittal to the Ellsberg trial judge.

The President acknowledged that he had authorized Henry

Krogh Statement Recalled

E. Petersen, an Assistant Attorney General who was given sole responsibility for the Watergate inquiry in March, "to pursue every issue involving Watergate but to confine his investigation to Watergate and related matters and to stay out of national security matters"—that is, not to forward the prosecutors' memorandum.

A week later, Mr. Nixon said, he changed his mind after an appeal from the then Attorney General Richard G. Kleindienst.

The New York Times reported on May 8 that President Nixon had twice attempted to prevent the Hunt-Liddy material from being forwarded to Los Angeles. In addition to his recommendation to Mr. Petersen, the President was said to have applied pressure — through Mr. Ehrlichman — on Egil Krogh Jr., the other leader of the plumbers team, not to

disclose classified details of the operation.

Mr. Krogh, who is 33 years old, took full responsibility for the illegal operation in a statement he submitted May 9 to President Nixon shortly after resigning as Under Secretary of Transportation, a post to which he had been nominated late last year.

"Agreement to this mission was my responsibility," his statement said, "a step taken in excess of instructions and without the knowledge or permission of any superior" (Mr. Haldeman and Mr. Ehrlichman).

Sources close to the investigation said that the prosecutors reached a different conclusion about the role of Mr. Haldeman and Mr. Ehrlichman in connection with the plumbers team after hearing the grand jury testimony of Mr. Young.

Precise details of Mr. Young's testimony could not be learned, but one source specifically said that the former aide to Henry

A. Kissinger, the President's chief adviser on foreign affairs, "did help" in convincing the prosecuting team that the White House was aware of the illegality of the Hunt-Liddy operations at the time they were being conducted.

Mr. Nixon, in his statement, noted that the plumbers unit "operated under extremely tight security rules."

"Its existence and functions were known only to a very few persons at the White House," he said. "These included Messrs. Haldeman, Ehrlichman and Dean."

New Information

One Justice Department source said that the Watergate prosecutors viewed the President's statement as an attempt to prevent them from attempting "to hook" the White House cover-up of the Watergate bugging to the 1971 plumbers activity.

The source made clear that Mr. Young and other witnesses had provided the prosecution with information about other apparently illegal activities of the plumbers team—which was not disbanded until December, 1971, six months after publication of the Pentagon papers.

One official referred a reporter to the grand jury testimony of Hunt, which was released May 4 by Judge William Matthew Byrne Jr., who presided over the Ellsberg trial. Judge Byrne dismissed that case on May 11 because of what he described as "improper Government conduct."

The case involved charges of espionage, theft and conspiracy against Dr. Ellsberg and Anthony J. Russo Jr. in connection with the disclosure of the Pentagon papers, a secret study of the origins and history of the Vietnam war.

In the grand jury testimony,

Hunt, a former operative for the Central Intelligence Agency, described his recruitment for the plumbers team amid the White House concern over the publication of the Pentagon papers. He then testified:

"At that time, as I understood it, there was some concern in the White House about the appropriateness of seeing the [Ellsberg] prosecution actually take place with regard to Dr. Ellsberg and his associates, and I shared that concern, my own feeling being that he would probably become a martyr. . . ."

Hunt went on to say, "It was felt, and I believe Mr. Krogh, who was the lawyer, suggested that it would be well if something could—if some way could be found whereby a judgment call could be made on Ellsberg in regard to his prosecutability."

In his Watergate statement, President Nixon said that in 1970 he authorized the Government's intelligence agencies to prepare plans for meeting what he termed a "security problem [of] critical proportions" in connection with racial and antiwar turmoil.

The subsequent recommendations, Mr. Nixon said, did not go into effect—despite his approval—because of the objection of J. Edgar Hoover, then the director of the Federal Bureau of Investigation. He said these plans had called for the resumption of breaking and entry operations by Federal agents in matters relating to what the President said was "national security."



Associated Press

David R. Young Jr., former aide of National Security Council, reportedly gave Federal prosecutors damaging information on John D. Ehrlichman and H. R. Haldeman.

JAMES J. KILPATRICK

Conscience, Public Trust and Ellsberg

Daniel Ellsberg, the chief purloiner of the Pentagon Papers, turned up in Washington Sunday as a guest on Meet the Press. Carl Stern of NBC and David Kraslow of The Star-News promptly took him over the jumps on the matter of morality, high and low.

It was an interesting exhibition. Ellsberg repeatedly balked, refused and ran around the gates. Some of us had come to the studio expecting to encounter a philosopher of noble purpose, a licensed and certified martyr. We left with the impression of a bafflegab artist, recently shingled by a second-rate school of the law. He would not grapple with the questions that mattered. It was as if the sainted Joan, tied to the stake, had demanded a stay of execution by virtue of the law that prohibits open-air fires before 5 o'clock.

The essential facts of the Ellsberg case are not in dispute. Ellsberg gained surreptitious access to a set of the famous Pentagon Papers, a top secret study of the U.S. role in Indochina. He sneaked off to a Xerox machine, copied the papers, and two years ago gave them to the New York Times. Subsequently he was indicted, and after a fiasco of a trial — a trial aborted by the government's criminal bungling — he went scot free. The question of his guilt or innocence remains unanswered.

What of the moral issue? Ellsberg conceded, in response to a question, that he thought he was breaking a law when he first took the papers and began making copies of them. He then assumed, as almost all of us did at the time, that the U.S. Criminal Code contained some simple statute declaring it a felony to make public, without proper authorization, a top secret document.

It wasn't until later that it turned out, to Ellsberg's

ment's chagrin, that no such law existed. He had to be tried under the old Espionage Act, a gauzy statute with holes as big as barn doors. The important thing is that Ellsberg, in doing "what I thought was right," thought he was doing an unlawful act. He did it anyway, in response to his own compelling obedience to a higher law.

Stern and Kraslow gave him a hard time. How could an orderly government function, asked Kraslow, if every person with access to top secret documents obeyed the same inner voices? Ellsberg responded irrelevantly that a government that sanctioned the Watergate offenses was disorderly and didn't deserve to operate. Stern got no better responses.

The questions cry out for clear answers. Granted, we have heard these questions in other contexts before. Antigone challenged what seemed to her an unjust law. Henry Mencken deliberately purchased

a banned book on the Boston Common. Martin Luther King put on his go-to-jail clothes and breached the laws of Birmingham. The Watergate Seven saw themselves as patriotic burglars. In such cases, the laws and the risks of punishment were clear.

In the context of "government documents," the issues are far more complex. The person who leaks a top secret document to The Times or to Jack Anderson is not exactly engaged in "stealing property." If he is stealing anything, he is stealing information. Who owns the information? Who has a right to it?

Obviously, there is such a thing as public property; a park bench is public property, and the man who steals it can be sent to jail. Is copied information lesser or greater than a park bench? Where do considerations of national security enter in?

As Kraslow's question plainly implied, no government can tolerate the helter-skelter leaking of documents that for valid reasons — reasons that need no explication — must be kept in confidence for a time. Persons who violate this common-sense requirement must be punished, and a reasonable law, capable of being enforced, must be enacted to make this clear.

Meanwhile, in this particular context, forgive me if I am not much impressed by self-justifying talk of a higher law. The man who accepts a high position in government — a position of public trust — gives his word of honor that he will not disclose the top secret material entrusted to him. If he then discloses it, he has done a dishonorable thing. Whatever the questions of law may be, for me at least, the issue of morality stops right there.

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Aides Explain Nixon's Pentagon Papers Assertion

Special to The New York Times

WASHINGTON, May 24 —

White House sources offered an explanation today for President Nixon's assertion that The New York Times in three installments of its presentation of the Pentagon Papers had published "a majority" of documents not included in the 47-volume Pentagon study.

In answer to questions, the sources said Mr. Nixon was referring to texts of Government documents that, while not physically appended to the study, were mentioned in it or cited in its footnotes. The sources added that Mr. Nixon's assertion was based on "a meticulous study by the Defense Department."

President Nixon made his comment on Tuesday in his statement describing what he called national-security justifications for domestic investigations at issue in the Watergate case.

The editors noted that no documents were published textually by The Times that were not either quoted from or footnoted in the Pentagon study.

Told of Surprise

Referring to the start of The Times's Pentagon Papers articles on June 13, 1971, the statement declared:

"Not until a few hours before publication did any responsible Government official know that they had been stolen. Most officials did not know they existed. No senior official of the Government had read them or knew with certainty what they contained."

"All the Government knew, at first, was that the papers comprised 47 volumes and some 7,000 pages, which had been taken from the most sensitive files of the Departments of State and Defense and the C.I.A., covering military and diplomatic moves in a war that was still going on."

"Moreover, a majority of the documents published with the first three installments in The Times had not been included in the 47-volume study—raising serious questions about what and how much else might have been taken."

Team's Narrative Described

The Time's first three installments, each occupying more than six pages of the newspaper, consisted of articles de-

scribing a Pentagon historical team's narrative on the origin and growth of American involvement in Vietnam over 3 decades, with accompanying texts of or extracts from 45 Government documents.

Morton B. Halperin, a for-

mer Pentagon official who was on the Pentagon team that prepared the study, said yesterday that the compilers had originally intended to produce a volume of source documents—such as Government memorandums and cablegrams—along with the narrative based on those documents. But limitations of clerical staff and facilities prevented this, he said.

Members of The Times team that edited the papers said the documents were obtained, along with most of the Pentagon study, by Neil Sheehan of the newspaper's Washington Bureau. Mr. Sheehan is on leave of absence from The Times and is in Vietnam doing research for a book.

Nixon View Questioned

Dr. Daniel Ellsberg, who was tried on charges of espionage, theft and conspiracy in the disclosure of the Pentagon Papers and whose case was dismissed on May 12, took issue today with the President's assertion that the publication of the papers caught the Administration by surprise.

In an interview, Dr. Ellsberg said agents of the Federal Bureau of Investigation had visited his employer, the Rand Corporation, more than a year before the articles appeared. The agents warned, he said,

that a wide variety of documents about Vietnam, entrusted to Rand for secret research, were being photographed and shown to antiwar senators.

Today, President Nixon once again underlined his contention that the publication of classified documents threatened national security. Addressing 450 former prisoners of war at a White House reception, he declared:

"Let me say it is time, in this country, to quit making national heroes out of those who steal secrets and publish them in newspapers. We must have confidentiality; we must have secret communication."

"I can assure you that I am going to meet my responsibility to protect the national security of the United States of America insofar as the secrecy is concerned. It is not that we are concerned about every little dribble here or there; but what I am concerned about is the highly classified documents in our National Security Council files, in the State Department and in the Defense Department."

"I say it is time for a new sense of responsibility in this country, and a new sense of dedication for everybody in the bureaucracy in this country, that if a document is classified keep it classified."

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 Mr. Bowers _____
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Ellsberg Prompts Senators To Requestion Richardson

Krogh Meeting Is at Issue

By ANTHONY RIPLEY

Special to The New York Times

WASHINGTON, May 22 — In an unexpected move, apparently in response to actions by Dr. Daniel Ellsberg, the Senate Judiciary Committee today reopened its hearings on the confirmation of Elliot L. Richardson as Attorney General and questioned him closely about his contacts with the White House and figures close to the Watergate scandal.

Mr. Richardson's nomination had been headed for a swift confirmation by Senators eager to get on with the criminal investigation of the Watergate case. Senator Sam J. Ervin Jr., Democrat of North Carolina and chairman of the special Watergate investigating committee, had announced that his vote would be for Mr. Richardson.

However, Dr. Ellsberg, a central figure in the Pentagon papers case that was dismissed May 11, informed a number of key Senators this morning that he felt Mr. Richardson was not

telling all he knew of a luncheon May 1 with Egil Krogh Jr., a White House staff man who headed the so-called "plumbers" group that was trying to stop leaks of information at the White House.

Again and again, Mr. Richardson went over his discussions with Mr. Krogh at the meeting, which had been set up April 30 by John D. Ehrlichman, the assistant to the President for domestic affairs and Mr. Krogh's boss.

Each time, it seemed, a little more detail came out.

"I cannot add to what I've already said," Mr. Richardson protested at one point. "I have given you answers to the same questions four, five and six times."

"Each time you answer them, we gain a little more information," said Senator John V. Tunney, Democrat of California. Mr. Richardson today produced a memorandum on the meeting indicating that Mr. Krogh wanted to fully disclose his part in the burglary at the office of Dr. Ellsberg's former psychiatrist in Los Angeles but was unsure of how to do it.

Such a burglary, Mr. Richardson said Mr. Krogh told him, could be understood only if one realized that it was done for national security and was not just a common burglary.

"Krogh felt he had been part of an undertaking that had a legitimate national security purpose, and as part of overzealousness in carrying out that purpose, a burglary was carried out," Mr. Richardson said.

Query Termed Appropriate

Mr. Krogh subsequently produced an affidavit outlining his responsibility in the case, but it contained no reference to any Central Intelligence Agency involvement in the burglary, although such involvement later became known. The statement went to United States District Judge William Matthew Byrne Jr., who was presiding over the Ellsberg case in Los Angeles.

The Senators questioned Mr. Richardson repeatedly on why Mr. Krogh had brought up the matter of C.I.A. involvement in his discussion at the May 1 luncheon but had failed to put it in his statement to the court.

Senator Philip A. Hart, Democrat of Michigan, said that as newly designated Attorney General or as a lawyer subject to the ethics of the bar, Mr. Richardson could reasonably be asked why he did not take some action after reading Mr. Krogh's statement and finding out that the C.I.A. involvement was not discussed.

Senator James O. Eastland, Democrat of Mississippi, the committee chairman, protested that Mr. Richardson "wasn't Attorney General—he was responsible for the prosecution."

Senator Hart replied that he was "a general member of the bar."

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Mr. Richardson commented that it did not occur to me to regard that as a significant omission."

In his notes, Mr. Richardson said that Mr. Krogh commented to him about the burglary: "Something needs to be brought to the att'n of pres. Was made aware of the fact itself in late March — but not who and what."

Mr. Richardson said it meant, as previously disclosed in The New York Times, that President Nixon knew of the burglary in late March. However, it was not made known to the judge in the Ellsberg trial until late April.

The memorandum over Mr. Krogh's possible actions—"Do I resign? Grand jury process—trial—all the explosiveness that it would entail?"

Another option that Mr. Krogh suggested, according to Mr. Richardson's notes, was "Open it up widely, proceed without the protection of the

system for a person's individual rights — affidavit to Judge Byrne?"

The third was, "Or is it done in open testimony before the Ervin committee? Press release — or what have you? (Many options open.)"

The notes continue, "The principle I'm adhering to now is that anything that undermines a complete investigation of all activity that could be considered illegal or improper is vital. Much worse fate would befall pres., others."

Mr. Richardson said his notes were sometimes better than his memory. He said that he had not remembered that Mr. Ehrlichman had made a statement to the Federal Bureau of Investigation on the burglary, but "I found in my notes that Mr. Ehrlichman had made a statement."

The notes state, "JDE has told FBI all he knew. K. did not consult him."

Mr. Richardson said Mr. Krogh called him May 2, the day after his meeting, to say that everything was all right and that he had spoken to Mr. Ehrlichman, who said he had spoken to the President and that the making of a full disclosure was approved.

Mr. Nixon announced on April 30 that Mr. Ehrlichman had resigned that day.

During a break in the hearings, Mr. Ehrlichman was asked if this meant that Mr. Ehrlichman was still acting as an intermediary with the President two days after resigning. Mr. Richardson said, "It does."

Senator Byrd asked Mr. Richardson what some of the "national security" interests were.

"I believe he [Krogh] referred to the fact that the Ellsberg papers had found their way into Soviet Embassy hands before they reached The New York Times or some other newspapers," Mr. Richardson said.

The notes added other things that had concerned Mr. Krogh, according to Mr. Richardson. These included reports by former New York Times reporters William Beecher and Tad Szulc and by Jack Anderson, the columnist dealing with the Pentagon papers, the Strategic Arms Limitation Talks, the India-Pakistan war and the Special Action Group formed at the Department of State. Another item was omitted from the notes because of its national security classification, Mr. Richardson said.

The hearings were reopened today at 10:00 A.M., a few minutes after the Senators had begun discussing Mr. Richardson's confirmation in closed hearings.

Senator Byrd said he wanted to go over transcripts before the matter of confirmation was brought to a vote in committee, but he indicated that Senate action on confirming Mr. Richardson could come as early as Thursday.



Associated Press

Elliot L. Richardson arrives to testify before Senate Judiciary Committee on post of Attorney General.

3 Prosecutors Nearly Quit

By SEYMOUR M. HERSH

Special to The New York Times

WASHINGTON, May 22—The three Federal prosecutors in the Watergate affair were on the verge of resigning from the case today, Justice Department sources said. They delayed their decision until a meeting tomorrow—their first—with Archibald Cox, the former Solicitor General who has been designated special prosecutor to supervise the case.

The three Assistant United States Attorneys, Earl J. Silbert, Seymour Glazer and Donald E. Campbell, believe that they have, in effect, solved the complex case, according to the sources, and resent the fact that neither Elliot L. Richardson, the Attorney General-designate, nor Mr. Cox has had any dealings with them since the scandal erupted last month.

Mr. Richardson, now the Secretary of Defense, was nominated by President Nixon for the Attorney General's post on April 30, and Mr. Cox's selection was announced last week.

About noon today, the three prosecutors scheduled a news conference for 2:30 P.M., apparently to announce their decision to leave the case. But their immediate superior, Harold H. Titus Jr., the United States Attorney, showed up instead and announced to newsmen that Mr. Cox had telephoned to invite the prosecuting team to meet with him tomorrow.

Reason Not Discussed

Neither Mr. Titus nor the three prosecutors would discuss the reason for the news conference in subsequent conversations.

But other Justice Department sources said that the three prosecutors, who have been directing a renewed grand jury investigation for more than two months, believe that they have finally established the full scope of the events concerning the initial bugging of the Democratic National Committee

headquarters in the Watergate complex and the subsequent cover-up of the case.

The prosecutors have told high Justice Department officials, sources said, that they expect to complete their investigation within two months and now believe that they can indict most of the major targets of their inquiry solely on the testimony of White House and campaign committee officials who were not directly implicated in the crimes.

"They have their prosecutor's case," one Justice Department official said. "They know what the story is and they know how to put it together."

The official did not elaborate, but last week the attorney for John D. Ehrlichman and H. R. Haldeman, two former key White House aides, filed a court affidavit noting that his clients were subject to possible indictment because of their role in Watergate.

At least 10 other former officials, either at the White House or the Committee for the Re-election of the President, are expected to be indicted in the Watergate case, sources said.

Last month, Mr. Silbert, who is director of the Watergate prosecution team, decided to forward an affidavit about the burglary at the office of Dr. Daniel Ellsberg's former psychiatrist to Dr. Ellsberg's trial in Los Angeles. The affidavit, which reportedly was sent only after President Nixon withdrew objections, led to further disclosures that eventually forced

the Ellsberg case to be dismissed.

The prosecutors have been a repeated target of criticism—most recently from Senator Sam J. Ervin Jr., Democratic of North Carolina and chairman of the Senate Watergate Committee—because they did not learn during their investigations last year that many high-level Nixon Administration aides had been involved in both the bugging and the cover-up.

One Justice Department official, asked about the prosecutors' discontent, noted that "everybody's overreacting about this because everybody's fearful for their own reputation." He said that the prosecutors "obviously resented the appointment of a special prosecutor."

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Mr. Gebhardt _____
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"Well," he added, "so do I. Unfortunately, I think it's necessary because the public has lost faith in the Justice Department. It's a fact, and I'm afraid we'll all just have to live with it."

It was subsequently learned that the prosecutors had sent Mr. Richardson a letter within the last two weeks outlining their progress in the Watergate investigation and requesting a meeting. As of last weekend, one reliable source said, the letter had not been answered. Mr. Richardson could not be reached today for comment.

Petersen to Join Session

One source close to Mr. Cox, who is a professor of law at Harvard, said that the former Solicitor General had made no decision about his plans for conducting the investigation.

The source said that Mr. Cox fully intended to give the three prosecutors a chance to outline their theory of the case and to report on their progress during the meeting tomorrow. The session will include Henry E. Petersen, the Assistant Attorney General who was personally placed in sole charge of the Watergate inquiry in late March by President Nixon.

Mr. Cox "recognizes that they're [the prosecutors] in a tight spot and doesn't have any intention of kicking anybody around," the Cox associate said. He added that Mr. Cox had decided to telephone the prosecutors even before learning today of their plans to hold a news conference.

It was further learned that Mr. Cox had chosen a Harvard Law School colleague, Prof. Phillip B. Heymann, to serve as an informal deputy, at least during the early stages of the inquiry. Mr. Heymann served as a State Department official in the Johnson Administration.

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16 Letters to the Editor

Of Ellsberg, Watergate, Ends and Means

To the Editor:

Is there not something ominous about the consciences of those making their voices heard in the matter of Watergate and the Pentagon papers? The point has been made that the Watergate affair differs from the usual instances of corruption in government in that the participants were motivated less by personal greed than by an arrogant certainty that opposition policies were so threatening as to justify a criminal act—in this case the invasion of privacy by telephone bugging.

Have not Mr. Ellsberg and Mr. Russo done exactly the same? Were they not on trial for an equally heinous act—theft of government property, however lacking in importance the documents may have been? Was not their defense that acts by the United States Government, which they opposed, were so damaging to their concept of the public good that they were justified in their criminal act?

Indeed, I agree with the judge's decision to declare a mistrial. The mechanism of investigation took an improper tack, and in their case the law worked well to protect them, be they innocent or guilty. But the public condoning, by so much of the articulate body of the nation, of a shameful act—theft, in Ellsberg's case—is a horrifying spectacle. Right and justice in these people's minds are now determined by their approval or distaste for the point of view which the criminal act espouses.

Ends justifying means have provided the rationale for many of the horrors in other countries in other times. Let us not acclaim Ellsberg and denounce Haldeman because the goals of one are to our liking and of the other not. Let us recognize them both as violators of the law and recognize equally their disdain for the rights and morality of the rest of us.

A. C. BRODIE
Dover, Mass., May 14, 1973

To the Editor:

In his Nobel lecture Solzhenitsyn pointed out with eloquence the obscene union of falsehood and violence which is devastating humanity in our time and may end in its extinction.

In our country the Administration has used secrecy, lying and deceit to keep itself in power. Crimes have been committed; the Constitution subverted; ignoble means used to justify ignoble ends. The finger has been pointed at this man and that man. Speculation and debate go on in the press and among the people about the ultimate responsibility: Is the President responsible—or merely irresponsible?

Meanwhile, the investigations, charges and countercharges and discussions have evaded and obscured a more fundamental human issue.

For the Nixon Administration has also continued the secrecy, lying and deceit which our Government has pursued, with the attendant violence, for the past ten years. (That these practices have been the practices of governments from time out of mind is no excuse.) Even now the senseless and destructive bombing of a small distant country goes on in defiance of the Constitution and of Congress.

Moreover, in the Ellsberg case, the White House has been directly implicated in an attempt to obstruct the course of justice. Thus it is now the clear responsibility of the Congress to assert its constitutional authority. Impeachment, however, would be a long and complicated process; meanwhile the operations of government would be practically at a standstill.

Unusual events call for unusual measures. Following the imaginative suggestion of Representative Henry Reuss of Wisconsin, the houses of Congress should pass a joint resolution pointing out the manifest misdeeds of the Executive; requesting the resignation of the President and the Vice President; providing thereby the constitutional accession to the Presidency of the Speaker of the House; and enjoining him, in consultation with the Congressional leaders of both parties to form a bipartisan government.

Only in this way can the confidence of the American people in its government be restored. Only in this way can this nation, honorably, efficiently and with dignity, conduct its relations with the other nations of the world.

STEARNS MORSE
Woodsville, N. H., May 14, 1973

Mr. Felt _____
Mr. Baker B ✓
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Mr. Cleveland _____
Mr. Conrad _____
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MAY 23 1973

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WHITE HOUSE RING REPORTEDLY SPIED ON RADICALS IN '70

Order to Set Up Intelligence
Unit on Continuing Basis
Laid to Ehrlichman

DATA WERE SENT TO DEAN

Watergate Sources Indicate
That Caulfield and Krogh
Also Were Involved

By SEYMOUR M. HERSH

Special to The New York Times

WASHINGTON, May 20 —

The White House established a secret intelligence unit in 1970 to collect and evaluate information about radical and antiwar groups, sources close to the Watergate investigation said today.

The unit, known as the Intelligence Evaluation Committee, is now clandestinely operated out of the Justice Department's Internal Security Division.

The sources said that the unit reported directly to John W. Dean 3d, the former White House counsel, and John J. Caulfield, a former New York City police detective who has been linked to an alleged Presidential offer of executive clemency to James W. McCord Jr.

The sources said that the intelligence unit had been set up in response to an order from John D. Ehrlichman, who has resigned, as Justice advised to President Nixon on domestic affairs because of the Watergate scandal. Egil Krogh Jr., an Ehrlichman aide, is believed to have been connected with the intelligence committee at varying times, the sources said.

Review of Reports Studied

Mr. Krogh resigned as Under Secretary of Transportation two weeks ago after his involvement in the burglary of Dr. Daniel Ellsberg's psychiatrist became publicly known.

The sources said that government investigators were now attempting to determine whether some of the intelligence committee's highly classified reports may have been used by other Justice Department agencies and the White House to justify undercover and double-agent activities against suspected opposition groups, including Democrats opposed to the Nixon Administration.

Undercover intelligence activities against radical and antiwar groups are legal and have been routinely utilized by Federal and local police agencies. The Nixon Administration has been linked, however, to a number of illegal activities against Democratic candidates stemming from last year's primary elections. These included an allegation that an undercover agent employed by White House officials wrote bogus

campaign literature accusing leading Democrats of sexual

Some investigators are known to suspect Mr. Dean may have relied on intelligence estimates produced by the committee to back up his belief that a White House intelligence operation was needed during the Democratic and Republican National Conventions at Miami Beach last year. The committee reports are based on wiretapping plus electronic eavesdropping by such agencies as the Pentagon's National Security Agency.

A number of highly classified documents known to contain electronically intercepted material have been turned over by Mr. Dean to a Federal District Court for safekeeping in connection with the ongoing Watergate investigation. The documents have not been publicly identified.

The intelligence group was publicly mentioned in an exchange at the Senate Watergate hearings Friday with McCord, a convicted member of the Watergate break-in team.

McCord testified that, in early 1972, officials of the Internal Security Division were supplying the Committee for the Reelection of the President with intelligence reports on antiwar and radical activities for possible political use. He also told of making a visit to the analysis and evaluation section of the Internal Security Division to receive the material.

By Ex-F.B.I. Agent

At that point, Senator Lowell P. Weicker Jr., Republican of Connecticut, asked:

"And this, as you understood, you were with the Intelligence Evaluation Committee at that time, or with the officers of it?"

McCord replied, in effect, yes.

A high-ranking Justice Department official confirmed the existence of the intelligence committee and its political uses. He described it in an interview as "answerable only to the White House."

"This was set up by the Nixon Administration," the official said. "It's run out of the White House."

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Date MAY 21 1973

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Daniel Ellsberg

Mr. Connelley
Mr. Sullivan
See pg 2

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The group is operated in the Justice Department by Bernard Wells, said to be a former agent of the Federal Bureau of Investigation. Its members include officials of the F.B.I., the Central Intelligence Agency, the National Security Agency, and various other police and official units, the Justice Department official said.

The sources said that the intelligence committee had been set up in an attempt to meet

what many Administration officials considered to be the extremely grave threat to democracy posed by various radical and antiwar groups who were demonstrating against the Vietnam war and calling for the overthrow of the Government.

To meet the reported threat, the sources said, an elaborate system of undercover activity, including infiltration and the use of double agents, was developed by the F.B.I. and the Internal Security division.

Government officials are now attempting to determine how much control and authority top-level White House officials, such as Mr. Ehrlichman and Mr. Krogh, had over such domestic intelligence operations.

Ehrlichman Agent Reported

Newsweek magazine reported in this week's edition that Anthony T. Ulasewicz, a former New York City policeman, began work in 1969 for Mr. Ehrlichman in the White House as a political undercover agent. The magazine report, confirmed by Government investigators, said that Mr. Ulasewicz had undertaken such sensitive assignments as an inquiry into a rumor that the brother of a possible Democratic Presidential candidate might have been involved in a homosexual incident.

Investigators said that Mr. Ulasewicz had been recommended to the White House staff by Mr. Caulfield, who was a bodyguard to former Attorney General John N. Mitchell before joining the White House staff himself in April, 1969. Last week, Mr. Caulfield was placed on administrative leave as assistant director of the Treasury Department's bureau of alcohol, tobacco and firearms.

Sources also identified Mr. Ulasewicz, who was said by Newsweek to have been a trolley-car conductor before joining the New York City po-

lice force, as the unnamed official who placed a telephone call to McCord in January to arrange for secret meetings with Mr. Caulfield. McCord told of the call in his televised Senate testimony.

Recruitments Reported

Newsweek also reported that Jeb Stuart Magruder, the former deputy director of the reelection committee, and Herbert L. Porter, another former campaign official, have told Senate investigators that they recruited demonstrators to disrupt Democratic primary campaigns.

Another source told The New York Times that on at least one occasion Republican funds were used by the Republican officials to fly demonstrators to Washington. Newsweek also said that Mr. Ulasewicz was paid in cash by Herbert W. Kalmbach, President Nixon's former personal attorney who has been linked to a number of clandestine Republican cash funds.

(Mount Clipping in Space Below)

Botched Prosecution Sets Ellsberg Free

THIS newspaper holds no brief for Daniel Ellsberg or Anthony Russo, now free of federal charges of espionage, conspiracy, and theft of government records.

District Judge W. Matthew Byrne Jr. of Los Angeles did about the only thing he could do in the Pentagon Papers case in light of the disarray into which the celebrated case had fallen.

Mr. Ellsberg virtually convicted himself when he admitted having taken, copied, and released classified government documents related to the Vietnam war. Mr. Russo's role was that of assistant.

By these acts, the pair violated their oaths as Rand Corporation consultants to the government. Their dovish view that the papers did not compromise the national security was immaterial. That is not for them to say. Their unilateral act went against established government classification policy. If the policy were too restrictive, it could have been changed. Instead it was breached with obvious political intent.

These acts were serious — in our judgment, criminal. They should have brought punishment to the perpetrators, if only to deter other individuals from substituting their ideas of what should be "top secret" for the decisions of responsible authorities. The precedent is a dangerous one.

But to have convicted Mr. Ellsberg and Mr. Russo under the circumstances of their trial would also have set a horrible precedent. As Judge Byrne rightly said, the government apparently perpetrated "unprecedented" violations of their basic rights as defendants.

The chief wrong-doers, it seems, were an *ad hoc* investigating team of CIA and FBI dropouts put together by the White House palace guard.

The group chose to employ the same clandestine methods used by the Ellsberg-Russo combination, including among other things a bit of burglary (in the office of the Ellsberg psychiatrist). Fighting illegality with illegality doesn't go in this nation of laws.

The government has at its disposal a number of investigatory agencies assigned to the task of accumulating evidence in criminal trials. Why the White House blunders thought these agencies needed help in this case is all but impossible to fathom. All the *ad hoc* group managed to do was muddy the waters. Neither the judge nor the prosecutors could tell which evidence before the court was tainted and which wasn't.

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The State

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Editor: Wm D Workman Jr.

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Submitting Office: Columbia

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— Furthermore, even an elementary understanding of judicial ethics on the part of the White House aides would have told them that it was improper to allow Judge Byrne's name to be mentioned in connection with the FBI director's job while this trial was underway. Whether it was so intended or not, it had the appearances of an attempted bribe.

Judge Byrne, by dismissing the case, maintained his independence and his integrity even if he kissed the FBI job goodbye.

Mr. Ellsberg and Mr. Russo now are free to blow up their "martyrdom" and make mischief with counter-suits. They will go unpunished for a crime they admit. The cost of the long investigation and trial goes down the drain, but — more tragically — so does justice.

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KISSINGER 5-15
 WITH BUGGING

NEW YORK (UPI) -- HENRY A. KISSINGER HAS CONFIRMED IN DETAIL FOR THE FIRST TIME HIS AWARENESS, BEGINNING IN MID-1969, OF THE WIRETAPPING THAT HAS BEEN CONNECTED TO THE WATERGATE AND PENTAGON PAPERS CASES, THE NEW YORK TIMES REPORTED TODAY.

THE TIMES SAID THAT KISSINGER, IN AN INTERVIEW, CONFIRMED HE HAD SEEN SUMMARIES FROM SEVERAL WIRETAPS PLACED IN 1969 AND 1970, BUT THAT HE HAD NOT ASKED THAT THEY BE INSTALLED NOR HAD HE SPECIFICALLY APPROVED THEM IN ADVANCE.

KISSINGER, PRESIDENT NIXON'S ADVISER ON NATIONAL SECURITY, HINTED LAST SATURDAY AT A WHITE HOUSE BRIEFING THAT HE HAD SEEN THE SUMMARIES OF THE WIRETAPS, BUT HE REFUSED TO ANSWER FURTHER QUESTIONS PENDING A REPORT BY ACTING FBI DIRECTOR WILLIAM D. RUCKELSHAUS. RUCKELSHAUS MADE PUBLIC HIS REPORT MONDAY AFTERNOON.

IT WAS DISCLOSED LAST WEEK IN LOS ANGELES THAT PENTAGON PAPERS DEFENDANT DR. DANIEL ELLSBERG HAD BEEN OVERHEARD SPEAKING ON A TAPPED PHONE OF DR. MORTON H. HALPERIN. AT THE TIME, HALPERIN WAS A MEMBER OF KISSINGER'S STAFF.

THE TIMES SAID KISSINGER DECLINED TO COMMENT WHEN ASKED WHETHER HE HAD TAKEN ANY ACTION WHEN HE DISCOVERED THAT HALPERIN'S PHONE WAS BEING TAPPED.

KISSINGER SAID, THE TIMES REPORTED, THAT HE HAD CONFERRED ONCE OR TWICE EARLY IN 1969 WITH THE LATE J. EDGAR HOOVER, DIRECTOR OF THE FBI. HE WAS QUOTED AS SAYING HE TOLD HOOVER OF HIS "VERY GREAT CONCERN" THAT NATIONAL SECURITY INFORMATION BE FULLY SAFEGUARDED, BUT THAT HE DID NOT ASK FOR ANY PARTICULAR FORM OF INVESTIGATION OR ASK THAT ANY PARTICULAR INDIVIDUAL BE INVESTIGATED.

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46 MAY 22 1973

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WASHINGTON CAPITAL NEWS SERVICE

Mr. Felt _____
 Mr. Baker _____
 Mr. Callahan _____

Ellsberg at Senate Hearing, Urges Congress to Restrict Secrecy in the White House

Sees His Trial as Effort To Discredit Democrats

By JAMES M. NAUGHTON

Special to The New York Times

WASHINGTON, May 16—Dr. Daniel Ellsberg, declaring that "secrecy corrupts just as power corrupts," urged Congress today to enact laws sharply restricting secrecy in the executive branch.

In a long appearance at a Senate hearing that erupted in a bitter clash between two Senators, Dr. Ellsberg said that excessive secrecy had helped create a Government atmosphere that "led us to Watergate and to what continues in Indochina."

He contended that access of senior Government officials to information classified higher than top secret had an intoxicating effect, persuading them to lie rather than admit the existence of the data. Specifically, he made the following charges:

¶ That the Government's unsuccessful attempt to prosecute him and Anthony J. Russo Jr. for disclosing the Pentagon papers had been part of an effort by the Nixon Administration to discredit Democratic Presidential contenders last year, especially Senator Edmund S. Muskie of Maine.

¶ That Henry A. Kissinger, President Nixon's national security adviser, told a "lie" in 1971 when he said that he was not aware of the Pentagon papers before they were published in The New York Times.

¶ That J. Fred Buzhardt Jr., general counsel of the Department of Defense, may have been "culpable" on perjury charges when he testified at the Pentagon papers trial last January that he had no knowledge of a Pentagon study asserting that national security was not harmed by publication of the history of United States' involvement in Indochina.

¶ That "the Chief Executive was directly involved in lies to a [United States] District Court" if, as reported today in The New York Times, President Nixon personally authorized wiretapping of Government aides that produced information, including conversations of Dr. Ellsberg—that were kept secret

until last week.

In dismissing all Government charges last week against Dr. Ellsberg and Mr. Russo, Judge William Matthew Byrne Jr. of United States District Court in Los Angeles said the Government's failure to produce the wiretap evidence had been "of greatest significance."

Pattern of Secrecy

But the burden of Dr. Ellsberg's comments today, to three Senate subcommittees meeting jointly, was that the incident was only one instance in a pattern of secrecy that represents what he said was "contempt" by the executive branch for Congress, the judicial process and the public.

Dr. Ellsberg spoke at one

point of data, classified far higher than top secret and available only to a handful of officials in the executive branch, as "a magic potion that turns ordinary human beings into arrogant, contemptuous menaces to democracy."

He said he had urged Mr. Kissinger in late 1968 not to be seduced by such data, but that in a 1970 conversation with the national security adviser at the Western White House in San Clemente, Calif., he concluded that Mr. Kissinger was "eating the secret honeydew."

Dr. Ellsberg, a lean, gray-haired man dressed in a conservative blue pin-striped suit, dominated the hearing as he sat alone at a witness table before half a dozen Senators, five television cameras, three tables of reporters and 156 spectators.

Senators Muskie, Edward M. Kennedy of Massachusetts and Lawton Chiles of Florida, all Democrats, joined in the rapt attention that Dr. Ellsberg enjoyed during a 50-minute outline of his views on executive secrecy and most of the questioning by those and other Senators.

But Senator Strom Thurmond Republican of South Carolina, insisted when he began interrogating Dr. Ellsberg that the witness be required to take an oath. Mr. Muskie objected, but Dr. Ellsberg said he did not mind and swore to the accuracy of his subsequent remarks.

Nonetheless, as the three-hour session was ending, Senator Thurmond said, as he had several times before, that Dr. Ellsberg had been found neither guilty nor innocent of wrong-

doing when the Pentagon papers trial was aborted.

But Senator Muskie cut in to say to Dr. Ellsberg that the court in Los Angeles had given him "innocence... until proven otherwise" and, turning to scowl at Senator Thurmond, he added, "I disagree with Senator Thurmond utterly."

The South Carolinian shot back that "the court didn't prove his guilt or innocence" and Senator Muskie retorted that Mr. Thurmond was "guilty of the very posture you have attributed to the witness," prejudging the acts of others.

"The court threw this case out, as you well know, because of the prosecution tactics in the case," Senator Thurmond insisted.

"The Constitution gives him [Dr. Ellsberg] his innocence," Mr. Muskie replied.

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UPI084

(KROGH)

WASHINGTON (UPI) -- EGIL "BUD" KROGH, UNDERSECRETARY OF TRANSPORTATION AND A FORMER WHITE HOUSE AIDE, PLANS "A FULL DISCLOSURE OF ALL THAT TOOK PLACE" AT THE TIME OF THE BURGLARY OF DANIEL ELLSBERG'S PSYCHIATRIST'S OFFICE, HIS LAWYER SAID TODAY.

KROGH, WHO TOOK LEAVE FROM HIS JOB YESTERDAY, WAS A DEPUTY ASSISTANT TO PRESIDENT NIXON AND AN AIDE TO JOHN D. EHRLICHMAN, NIXON'S NEWLY RESIGNED DOMESTIC AFFAIRS ADVISER, AT THE TIME OF THE BREAK-IN ON SEPT. 7, 1971.

EHRLICHMAN EARLIER THIS WEEK NAMED KROGH AS A PARTICIPANT IN A WHITE HOUSE INVESTIGATION OF ELLSBERG FOLLOWING PUBLICATION OF THE SECRET PENTAGON PAPERS ON THE ORIGINS AND CONDUCT OF THE VIETNAM WAR.

ELLSBERG IS ON TRIAL IN LOS ANGELES FOR PROVIDING THE PAPERS TO THE NEW YORK TIMES AND OTHERS.

WILLIAM TREADWELL, KROGH'S LAWYER, SAID KROGH WOULD FILE A SWORN LEGAL AFFIDAVIT. HE DID NOT REVEAL WHEN THE AFFIDAVIT WOULD BE FILED.

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"THIS IS OUR PRESENT PLAN," SAID TREADWELL. "WE ARE WORKING ON THE AFFIDAVIT AND IT WILL BE A FULL DISCLOSURE OF ALL THAT TOOK PLACE."

KROGH, 34, A MEMBER OF EHRLICHMAN'S FORMER SEATTLE LAW FIRM BEFORE JOINING THE WHITE HOUSE STAFF, WAS CONFIRMED AS THE TRANSPORTATION DEPARTMENT'S NO. 2 OFFICIAL IN FEBRUARY.

AT HIS SENATE CONFIRMATION HEARING, KROGH SWORE UNDER OATH THAT HE HAD NOTHING TO DO WITH THE WATERGATE. BUT HE TOLD THE SENATE COMMERCE COMMITTEE THAT HE, EHRLICHMAN AND DAVID YOUNG, A FORMER STAFF MEMBER OF THE NATIONAL SECURITY COUNCIL, SET UP A TASK FORCE IN THE WHITE HOUSE KNOWN AS THE "PLUMBERS."

THEIR JOB WAS TO PLUG NEWS LEAKS OF CLASSIFIED INFORMATION FROM THE WHITE HOUSE, KROGH SAID. HE ACKNOWLEDGED HIRING GORDON LIDDY AND HOWARD HUNT TO WORK FOR THE TASK FORCE.

ACCORDING TO INFORMATION PROVIDED BY THE JUSTICE DEPARTMENT TO THE JUDGE AT THE ELLSBERG TRIAL, HUNT AND LIDDY BURGLARIZED THE OFFICE OF ELLSBERG'S PSYCHIATRIST WHILE COLLECTING INFORMATION FOR A DOSSIER ON ELLSBERG.

EHRLICHMAN, IN AN INTERVIEW WITH FBI AGENTS THAT WAS RELEASED AT THE ELLSBERG TRIAL, SAID THAT HE SENT WORD TO THE MEN "NOT TO DO THIS AGAIN" WHEN HE LEARNED OF THE BURGLARY.

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 Mrs. Hogan _____

W. Spahr

UPI147

(ELLSBERG)

LOS ANGELES (UPI) -- THE JUDGE IN THE PENTAGON PAPERS TRIAL
 DISMISSED ALL CHARGES TODAY AGAINST DANIEL ELLSBERG AND ANTHONY RUSSO
 BECAUSE OF BURGLARY AND WIRETAPS BY THE FEDERAL GOVERNMENT IN THE
 CASE.

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WASHINGTON CAPITAL NEWS SERVICE

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UPI148

ADD ELLSBERG, LOS ANGELES (UPI-147)

U.S. DISTRICT COURT JUDGE MATT BYRNE THREW OUT ALL COUNTS OF ESPIONAGE, CONSPIRACY AND THEFT OF GOVERNMENT DOCUMENTS, THEREBY FREEING ELLSBERG AND RUSSO AFTER A TRIAL THAT HAD GONE ON FOR MORE THAN FIVE MONTHS.

BYRNE ALSO DECLARED A MISTRIAL IN THE LIGHT OF THE "IMPROPER GOVERNMENT CONDUCT" WHICH HE SAID HAD JEOPARDIZED THE RIGHTS OF THE DEFENDANTS TO A FAIR TRIAL,

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UPI115

(ELLSBERG)

LOS ANGELES (UPI) -- THE DEFENSE IN THE PENTAGON PAPERS TRIAL SAID TODAY THERE WAS "NO ALTERNATIVE TO THE DISMISSAL OF THE CASE" BECAUSE OF AN FBI WIRETAP AGAINST DANIEL ELLSBERG.

DEFENSE ATTORNEYS MADE IT CLEAR THEY FELT THAT THE DISCLOSURE THURSDAY OF AN FBI WIRETAP THAT OVERHEARD ELLSBERG'S CONVERSATIONS IN 1969 AND 1970 WAS "A FLAGRANT VIOLATION OF A COURT ORDER ISSUED A YEAR AGO TO DISCLOSE ELECTRONIC SURVEILLANCE." BUT ATTORNEYS SAID THEY WOULD REALLY PREFER THE JUDGE TO ORDER THE ACQUITTAL OF ELLSBERG AND CODEFENDANT ANTHONY J. RUSSO.

"IF THE CASE BECOMES MOOT, THERE ARE NOT GOING TO BE ANY OTHER ISSUES DISCUSSED," U.S. DISTRICT COURT JUDGE MATT BYRNE TOLD THE DEFENSE.

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UPI006

(ELLSBERG)

LOS ANGELES (UPI) -- THE JUDGE IN THE PENTAGON PAPERS TRIAL, CITING GOVERNMENT MISCONDUCT, FRIDAY THREW OUT ALL CHARGES OF ESPIONAGE, CONSPIRACY AND THEFT AGAINST DANIEL ELLSBERG AND ATHONY RUSSO.

THE ACTION CAME TWO WEEKS TO THE DAY AFTER THE STARTLING LINK WITH THE WATERGATE AFFAIR CAME TO LIGHT.

IN DISMISSING THE CHARGES AND DECLARING A MISTRIAL, U.S. DISTRICT COURT JUDGE MATT BYRNE ISSUED A STRONGLY WORDED STATEMENT ACCUSING THE GOVERNMENT OF MISCONDUCT SO SERIOUS IT "OFFENDED A SENSE OF JUSTICE" AND "PRECLUDED A FAIR TRIAL."

BYRNE SAID HE WAS DISMISSING THE INDICTMENT SO THAT THE DEFENDANTS COULD NOT BE TRIED AGAIN ON THE CHARGE BECAUSE OF "AN EXTRAORDINARY SERIES OF DISCLOSURES REGARDING THE CONDUCT OF SEVERAL GOVERNMENT AGENCIES."

THE JUDGE CITED THE REVELATIONS DURING THE PAST TWO WEEKS OF A WHITE HOUSE-ORDERED BURGLARY OF ELLSBERG'S PSYCHIATRIST'S OFFICE AND A WIRETAP WHICH OVERHEARD ELLSBERG'S TELEPHONE CONVERSATIONS AND WHICH WAS NOT REVEALED AT ANY TIME DURING NEARLY TWO YEARS OF LITIGATION.

ELLSBERG TOLD NEWSMEN ON THE STEPS OF THE COURTHOUSE THAT HE PLANNED TO FILE A CIVIL SUIT CHARGING THE GOVERNMENT WITH BAD FAITH PROSECUTION AND INVASION OF PRIVACY. HE SAID HE HOPED TO FORCE THE GOVERNMENT TO REIMBURSE HIM FOR THE EXPENSE OF DEFENDING HIMSELF, ESTIMATED AT \$1 MILLION.

ELLSBERG SAID THERE WAS ENOUGH EVIDENCE "TO INDICT PRESIDENT NIXON FOR CONSPIRING AGAINST TONY AND ME AND THE AMERICAN PEOPLE."

NOT RECORDED

48 MAY 22 1973

79 MAY 23 1973

WASHINGTON CAPITAL NEWS SERVICE

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WASHINGTON (UPI) -- A TEAM OF CALIFORNIA PROSECUTORS HAS BEEN WORKING SINCE MIDWEEK HERE IN AN ATTEMPT TO LINK FORMER WHITE HOUSE AIDES WITH THE EFFORT TO STEAL DANIEL ELLSBERG'S PSYCHIATRIC RECORDS, IT HAS BEEN LEARNED.

THE LEGAL OFFICIALS FROM LOS ANGELES, SOURCES SAID FRIDAY, WERE REPORTED CONCENTRATING ON THE "BIG FISH" WHO ORDERED THE BURGLARY OPERATION--NOT THOSE WHO ACTUALLY EXECUTED IT.

SWORN DOCUMENTS FILED IN FEDERAL COURT HAVE IDENTIFIED EX-WHITE HOUSE AIDES JOHN EHRLICHMAN AND EGIL "BUD" KROGH AS THE MEN WHO DIRECTED A SPECIAL WHITE HOUSE INVESTIGATION OF ELLSBERG FROM WHICH THE BURGLARY STEMMED. EHRLICHMAN HAS SAID THE PROBE WAS ORDERED BY PRESIDENT NIXON BUT THAT NEITHER HE NOR NIXON AUTHORIZED ANY BURGLARY.

UPI 05-12 08:22 AED

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CIA 5-10

DAY LD

BY JOHN F. BARTON

WASHINGTON (UPI) -- CIA DIRECTOR JAMES R. SCHLESINGER HAS ADMITTED HIS AGENCY PROVIDED THE WHITE HOUSE WITH A PSYCHOLOGICAL PROFILE OF DANIEL ELLSBERG AND SUPPLIED PARAPHERNALIA USED IN THE BURGLARY OF HIS PSYCHIATRIST'S OFFICE.

SCHLESINGER TOLD A SENATE SUBCOMMITTEE WEDNESDAY THAT WATERGATE CONSPIRATOR E. HOWARD HUIT WAS GIVEN THE BURGLARY-RELATED EQUIPMENT IN 1971 ON ORDERS FROM THEN CIA DEPUTY DIRECTOR ROBERT E. CUSHMAN--ACTING ON AN IMPLIED RECOMMENDATION FROM EX-WHITE HOUSE AIDE JOHN EHRLICHMAN.

HE SAID FORMER CIA DIRECTOR RICHARD M. HELMS, WHOM HE SUCCEEDED THIS YEAR, ALSO AUTHORIZED HIS STAFF TO PREPARE A PSYCHOLOGICAL PROFILE OF ELLSBERG IN 1971 AT THE REQUEST OF ANOTHER WHITE HOUSE AIDE. IT WAS THE FIRST TIME HELMS HAD BEEN LINKED TO THE SECRET INVESTIGATION OF ELLSBERG.

BUT SCHLESINGER ADDED THAT THESE ACTS WERE "ILL-ADVISED" AND WOULD NOT BE REPEATED IN HIS TENURE AS HEAD OF THE CIA.

ELLSBERG, CURRENTLY ON TRIAL IN LOS ANGELES FOR LEAKING THE PENTAGON PAPERS TO THE NEW YORK TIMES, IS SEEKING A MISTRIAL BECAUSE OF THESE DISCLOSURES.

SEN. JOHN L. MCCLELLAN, D-ARK., CHAIRMAN OF THE COMMITTEE WHICH OVERSEES U.S. INTELLIGENCE SPENDING, SAID THAT SCHLESINGER'S TESTIMONY INDICATED "ON THE SURFACE" THAT THE CIA HAD VIOLATED THE LAW BY GETTING INVOLVED IN DOMESTIC SECURITY. BUT HE SAID HE WOULD RESERVE JUDGMENT UNTIL THE COMMITTEE HEARS FROM HELMS AND CUSHMAN--AND POSSIBLY EHRLICHMAN.

SCHLESINGER, WHOSE TESTIMONY WAS GIVEN IN PRIVATE AND LATER RELEASED BY MCCLELLAN, SAID THAT CUSHMAN RECEIVED A TELEPHONE CALL JULY 8, 1971, FROM EHRLICHMAN SAYING THAT HE HAD BEEN APPOINTED AS A WHITE HOUSE SECURITY CONSULTANT.

NOT RECORDED

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EHRlichman recently resigned as President Nixon's domestic adviser and Hunt, a one-time CIA agent, pleaded guilty last January to the bugging and break-in the Watergate offices of the Democratic National Committee.

After Ehrlichman's call, Schlesinger said, Hunt visited Cushman and said he had been charged with a "highly sensitive mission by the White House to elicit information from an individual whose ideology he was not entirely sure of."

On Cushman's instructions, he said, the CIA gave Hunt alias documents--a social security card, driver's license and several membership cards--in the name of Edward Joseph Warren, and disguise materials including a wig, glasses and a speech lateration device.

Hunt also received a commercial tape recorder in a typewriter case and a commercial camera disguised as a tobacco pouch, Schlesinger added.

In sworn testimony before a grand jury, Hunt has admitted using this equipment to arrange a burglary of the office of Ellsberg's psychiatrist. The burglars found nothing they wanted in the psychiatrist's files, he said.

At the time, Schlesinger said, the CIA "had no awareness of the details of Mr. Hunt's activities." He told newsmen he was not being critical of Cushman because it was "more widespread than that."

"The agency's impression was that Mr. Hunt was engaged in activity related to identifying and closing off the security leaks that were so much of a preoccupation of the government at the time," he said.

Schlesinger said the CIA's assistance to Hunt stopped Aug. 31, 1971, when his request for a credit card and a secretary were denied. He noted the burglary occurred about three days later.

In July, 1971, he said, Helms instructed agency staff to work with White House aide David Young in connection with security leaks and Young requested a psychological study of Ellsberg. The study apparently was approved by Helms, he said.

He said the completed profile, compiled from newspaper clippings and government papers, was delivered to Young Nov. 9. He explained the CIA once used this technique to prepare profiles on foreign leaders.

Ehrlichman recently was cleared of any direct link to the burglary of the psychiatrist's office by his former deputy, Egil Krogh, who admitted authorizing it.

Hunt also has admitted copying secret state department cables and forging others to implicate the late President John F. Kennedy in the assassination in 1963 of South Vietnamese President Ngo Dinh Diem. He said he did it on orders of another one-time White House aide, Charles W. Colson.

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UPI 198

(ELLSBERG BURGLAR)

MIAMI (UPI) -- A MIAMI REAL ESTATE MAN WHO TOOK PART IN THE BURGLARY OF DANIEL ELLSBERG'S PSYCHIATRIST'S OFFICE WITH WATERGATE CONSPIRATORS EDWARD BARKER AND EUGENIO MARTINEZ TESTIFIED TODAY HE WAS TOLD IT WAS A NATIONAL SECURITY MISSION.

THE TESTIMONY WAS GIVEN BY FELIPE DEDIEGO BEFORE STATE ATTORNEY RICHARD GERSTEIN AT THE REQUEST OF LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE.

GERSTEIN RELEASED INFORMATION ON DEDIEGO'S STATEMENT AT A NEWS CONFERENCE IN MIAMI THIS MORNING. GERSTEIN SAID THAT DEDIEGO TESTIFIED FREELY AFTER BEING GIVEN IMMUNITY FOR ANY LOS ANGELES CRIME.

"IF HE IS IMMUNIZED ELSEWHERE, HE CAN SHED LIGHT ON OTHER MATTERS," GERSTEIN SAID.

DEDIEGO TESTIFIED THAT HE WAS TOLD THE TEAM WAS ON A NATIONAL SECURITY MISSION WHEN IT WENT TO LOS ANGELES TO BURGLARIZE THE OFFICE OF DR. LEWIS FIELDING.

DEDIEGO SAID HE, BARKER AND MARTINEZ FLEW FROM MIAMI TO LOS ANGELES. HE SAID THEY STAYED AT A HOTEL A BLOCK FROM DR. FIELDING'S BEVERLY HILLS OFFICE.

THAT NIGHT, DEDIEGO TESTIFIED, THE TRIO WENT TO FIELDING'S OFFICE EQUIPPED WITH PHOTOGRAPHIC EQUIPMENT. DEDIEGO SAID MARTINEZ FOUND ELLSBERG'S FILE AND PHOTOGRAPHED ITS CONTENTS AND THAT BARKER TOOK THE FILM AND PHOTO EQUIPMENT, APPARENTLY GIVING IT TO SOMEONE ELSE.

DEDIEGO SAID THAT THE TRIO FLEW BACK TO MIAMI THE NEXT MORNING.

HE SAID HE HAD WORKED FOR BARKER AS A REAL ESTATE SALESMAN BUT HAD AN OFFICE OF HIS OWN. HE SAID HE KNEW BARKER AS WELL AS OTHER WATERGATE FIGURES, HOWARD HUNT AND GORDON LIDDY, FROM THE DAY OF HIS INVASION OF CUBA.

DEDIEGO SAID HE WAS NOT PAID FOR THE MISSION BUT WAS TOLD HE WOULD GET PLENTY OF MONEY ON FUTURE ASSIGNMENTS.

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46 MAY 22 1973

79 MAY 23 1973 * WASHINGTON CAPITAL NEWS SERVICE

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UPI060

(POLITICAL SABOTAGE)

LOS ANGELES (UPI) -- FORMER WHITE HOUSE AIDE EGIL "BUD" KROGH HAS AGREED TO TESTIFY BEFORE A COUNTY GRAND JURY HERE LOOKING INTO THE ELLSBERG BURGLARY, WHICH HE HAS ADMITTED ORDERING, ACCORDING TO DEPUTY DISTRICT ATTORNEY RICHARD HECHT.

HECHT FLEW TO WASHINGTON THIS WEEK TO TALK TO JUSTICE DEPARTMENT OFFICIALS ABOUT THE BREAK-IN AT THE OFFICE OF DANIEL ELLSBERG'S PSYCHIATRIST BY THE WATERGATE TEAM.

DISTRICT ATTORNEY JOSEPH BUSCH HAS SAID THAT LOCAL CHARGES WILL BE BROUGHT AGAINST THOSE RESPONSIBLE.

KROGH, IN AN AFFIDAVIT TO THE JUDGE IN THE PENTAGON PAPERS TRIAL, SAID THAT AS AN ASSISTANT TO JOHN EHRLICHMAN IN THE WHITE HOUSE, HE ORDERED THE BREAK-IN AT THE PSYCHIATRIST'S OFFICE, IN THE BELIEF THAT IT WAS NEEDED TO OBTAIN INFORMATION IMPORTANT TO THE NATIONAL SECURITY.

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LOS ANGELES (UPI) -- JOHN EHRLICHMAN GAVE ORDERS LESS THAN TWO MONTHS AGO TO A FORMER WHITE HOUSE LAWYER TO CONCEAL THE ELLSBERG BURGLARY FROM THE FBI, THE LAWYER TOLD FEDERAL AGENTS.

THE CHARGE WAS MADE BY CHARLES COLSON, FORMER WHITE HOUSE SPECIAL COUNSEL, IN AN INTERVIEW WITH THE FBI SUBMITTED TO THE JUDGE IN THE PENTAGON PAPERS TRIAL THURSDAY.

COLSON SAID HE GOT SIMILAR INSTRUCTIONS FROM JOHN DEAN III.

U.S. DISTRICT COURT JUDGE MATT BYRNE HAS ORDERED THE GOVERNMENT TO REVEAL ALL IT CAN ABOUT THE BREAK-IN AT THE OFFICE OF DR. LEWIS FIELDING, ELLSBERG'S PSYCHIATRIST. ACCORDING TO AFFIDAVITS FILED WITH THE COURT, CONVICTED WATERGATE CONSPIRATORS E. HOWARD HUNT AND G. GORDON LIDDY MASTERMINDED THE BREAK-IN, AIMED AT FINDING ELLSBERG'S RECORDS AS PART OF A SPECIAL WHITE HOUSE INVESTIGATION OF ELLSBERG ORDERED BY PRESIDENT NIXON.

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MIAMI (UPI) -- A REFUGEE FROM CUBA SAID THURSDAY THAT HE AND TWO CONVICTED WATERGATE BURGLARS USED MASKING TAPE AND GLASS CUTTERS TO BREAK INTO THE OFFICE OF DANIEL ELLSBERG'S PSYCHIATRIST AND PHOTOGRAPH HIS FILES.

THE REFUGEE, FELIE DEDIEGO, SAID THE THREE BELIEVED THEY WERE WORKING FOR THE CIA WHEN THEY ENTERED THE OFFICE OF DR. LEWIS FIELDING IN 1971.

IN TESTIMONY BEFORE STATE ATTORNEY RICHARD GERSTEIN, DEDIEGO SAID HE AND BERNARD BARKER AND EUGENIO MARTINEZ USED MASKING TAPE AND GLASS CUTTERS TO BREAK A WINDOW, PUSHED DOWN A DOOR, THEN PHOTOGRAPHED FIELDING'S FILES.

DEDIEGO'S TESTIMONY CAME AFTER GERSTEIN GRANTED HIM IMMUNITY AT THE REQUEST OF THE LOS ANGELES DISTRICT ATTORNEY'S OFFICE.

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WASHINGTON (UPI) -- A FORMER YOUTH ORGANIZER FOR PRESIDENT NIXON'S RE-ELECTION CAMPAIGN THURSDAY DESCRIBED HIS METHODS FOR LEARNING THE PLANS OF PROTESTERS CAMPED IN FRONT OF THE WHITE HOUSE.

KENNETH RIETZ, 32, TOLD NEWSMEN AFTER A VOLUNTARY APPEARANCE BEFORE WATERGATE PROSECUTORS THAT HE HIRED A YOUNG PERSON TO SIT IN FRONT OF THE WHITE HOUSE LAST SUMMER WITH ANTIWAR PROTESTORS AND FIND OUT WHAT THEY WERE PLANNING FOR THE UPCOMING REPUBLICAN NATIONAL CONVENTION. HE SAID HIS INFORMANT "WAS A VERY VALUABLE SOURCE OF INFORMATION."

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HOUSTON (UPI) -- A FEDERAL GRAND JURY HAS REOPENED AN INVESTIGATION INTO AN OILMAN'S \$100,000 CONTRIBUTION TO THE NIXON CAMPAIGN, PART OF WHICH WAS TRACED TO THE BANK ACCOUNT OF A CONVICTED WATERGATE CONSPIRATOR.

THE PANEL HEARD THREE WITNESSES THURSDAY AND WAS EXPECTED TO CALL ROBERT ALLEN, PRESIDENT OF GULF RESOURCES AND CHEMICAL CO. WHO MADE THE CONTRIBUTION.

ALLEN'S CONTRIBUTION WAS RETURNED IN JANUARY AT HIS REQUEST. HE SAID THIS WEEK THE CONTRIBUTION WAS HIS OWN MONEY AND DIDN'T INVOLVE COMPANY FUNDS. IT IS A VIOLATION OF FEDERAL LAW FOR A CORPORATION TO MAKE POLITICAL DONATIONS.

THE GOVERNMENT SAID \$89,000 OF THE CONTRIBUTION WAS TRACED THROUGH A MEXICO CITY ATTORNEY TO THE MIAMI BANK ACCOUNT OF BERNARD BARKER, CONVICTED OF THE RAID ON THE DEMOCRATIC NATIONAL HEADQUARTERS LAST JUNE.

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NEW YORK (UPI) -- TELEVISION COMMENTATOR ERIC SEVAREID THURSDAY SAID THAT FORMER ATTORNEY GENERAL JOHN MITCHELL TRIED IN 1969 TO INFLUENCE A RULING FROM TWO SUPREME COURT JUSTICES IN A SET OF WIRETAPPING CASES.

THE EFFORT WAS UNSUCCESSFUL, SEVAREID SAID ON HIS NIGHTLY COMMENTARY ON THE CBS EVENING NEWS.

"IT IS NOW KNOWN, THOUGH NEVER HERETOFORE PUBLISHED, THAT IN THE SPRING OF '69 ATTORNEY GENERAL MITCHELL SENT A JUSTICE DEPARTMENT EMISSARY PRIVATELY TO THE SUPREME COURT," SEVAREID SAID.

"THERE HE TRIED TO INFLUENCE TWO JUSTICES ON A PENDING SERIES OF CASES INVOLVING WIRETAPPING. THE JUSTICES IGNORED THIS EXTRAORDINARY VIOLATION OF THE SEPARATION OF POWERS PRINCIPLE AND THEY RULED AGAINST THE DEPARTMENT."

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CIA 5-12

DAY LD

BY JOHN F. BARTON

WASHINGTON (UPI) -- RANKING INTELLIGENCE EXPERTS IN CONGRESS BLAME THE WHITE HOUSE AND EX-PRESIDENTIAL AIDES JOHN EHRLICHMAN--NOT THE CIA--FOR HELPING IN THE 1971 BURGLARY OF THE OFFICE OF DANIEL ELLSBERG'S PSYCHIATRIST.

FORMER CIA DEPUTY DIRECTOR ROBERT E. CUSHMAN TOLD THREE CONGRESSIONAL COMMITTEES FRIDAY HE ACTED ON ORDERS WITH "THE AUTHORITY OF THE PRESIDENT'S NAME" WHEN HE AUTHORIZED ASSISTANCE FOR E. HOWARD HUNT, WHO WAS SECRETLY PLANNING THE BURGLARY. THE ORDERS CAME FROM EHRLICHMAN, HE SAID.

"I DON'T THINK THE CIA VIOLATED THE LAW," SEN. HENRY M. JACKSON, D-WASH., TOLD NEWSMEN AFTER HEARING CUSHMAN'S TESTIMONY. "I THINK THE WHITE HOUSE VIOLATED THE LAW. EHRLICHMAN, IN MY JUDGEMENT, WAS MAKING A REQUEST THAT VIOLATED THE LAW.

"I THINK THEY (THE WHITE HOUSE) VIOLATED THE NATIONAL SECURITY ACT OF 1947 IN REQUESTING IT BECAUSE THEY KNEW IT WAS FOR DOMESTIC PURPOSES."

THE LAW LIMITS THE CIA TO FOREIGN INTELLIGENCE.

HUNT, A FORMER CIA AGENT WHO PLEADED GUILTY LAST JANUARY TO CONSPIRACY IN THE WATERGATE BREAK-IN, ALSO HAS ADMITTED PLANNING THE PSYCHIATRIST'S OFFICE BURGLARY AFTER ELLSBERG LEAKED THE PENTAGON PAPERS TO THE NEWS MEDIA. CUSHMAN SAID THE CIA PROVIDED HUNT WITH THE PARAPHERNALIA--INCLUDING A TAPE RECORDER, CAMERA, FAKE EYEGLASSES, A WIG AND PHONY IDENTIFICATION.

62-1110-1
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 WASHINGTON CAPITAL NEWS SERVICE

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WASHINGTON CAPITAL NEWS SERVICE

CUSHMAN TESTIFIED HE WAS ASKED BY EHRLICHMAN ON JULY 7, 1971, TO AID HUNT, WHOM EHRLICHMAN DESCRIBED AS A "BONA FIDE EMPLOYEE, A CONSULTANT ON MATTERS" FOR THE WHITE HOUSE.

"I HAD KNOWN MR. EHRLICHMAN FOR A GOOD 10 TO 12 YEARS AND RESPECTED HIM HIGHLY AS A MAN OF COMPLETE HONESTY AND DEVOTION TO DUTY," CUSHMAN, NOW MARINE CORPS COMMANDANT, SAID IN AN AFFIDAVIT FILED WITH THE CONGRESSIONAL COMMITTEES.

"I ALSO KNEW THAT HE WAS ONE OF THE THREE CHIEFS OF STAFF, AS IT WERE, TO THE PRESIDENT AND THAT THEREFORE HE SPOKE WITH THE AUTHORITY OF THE PRESIDENT'S NAME.

"FROM THESE FACTS, I THEN DREW THE FOLLOWING CONCLUSION, WHICH I BELIEVE ANY REASONABLE MAN WOULD HAVE REACHED, NAMELY, THAT HOWARD HUNT HAD BEEN HIRED BY THE WHITE HOUSE TO ACT IN THE SECURITY FIELD AND THAT THE CENTRAL INTELLIGENCE AGENCY WAS BEING ORDERED TO ASSIST HIM."

CUSHMAN SAID THE CIA FINALLY DECIDED TO STOP HELPING HUNT BECAUSE HE "WAS BECOMING MORE AND MORE UNREASONING AND DEMANDING AND WAS ATTEMPTING TO GO FAR BEYOND THE SCOPE OF THE ORIGINAL INSTRUCTIONS." EHRLICHMAN WAS INFORMED OF THIS AUG. 27, 1971, HE SAID.

SEN. STUART J. SYMINGTON, D-MO., ACTING CHAIRMAN OF THE SENATE ARMED SERVICES COMMITTEE, TOLD NEWSMEN HE "COULD NOT CRITICIZE GEN. CUSHMAN FOR THE ACTION HE TOOK IN THE BEGINNING."

"WHEN A MAN IN THE POSITION OF MR. EHRLICHMAN, WHO WAS THE FIRST DEPUTY TO THE COMMANDER IN CHIEF IN EFFECT, REQUESTS SOMETHING FROM A MAN IN UNIFORM, I DON'T THINK THE MAN IN UNIFORM IS GOING TO DISAGREE," SYMINGTON SAID.

REP. LUCIEN NEDZI, D-MICH., CHAIRMAN OF A HOUSE INTELLIGENCE SUBCOMMITTEE THAT ALSO HEARD CUSHMAN, SAID "THE PROBLEM HERE REALLY ISN'T THE AGENCY GOING HAYWIRE...IT WAS THE ORDER THAT WAS RECEIVED WHICH WAS WRONG."

CUSHMAN SAID HUNT CAME TO HIS OFFICE ON JULY 22, 1971, AND "STATED THAT HE HAD A VERY SENSITIVE ONE TIME INTERVIEW THAT THE WHITE HOUSE WANTED HIM TO HOLD WITH A PERSON WHOSE IDEOLOGY HE WAS NOT TOO SURE OF AND THAT HE DARE NOT REVEAL HIS, HUNT'S, TRUE IDENTITY."

"THE WHITE HOUSE THEREFORE WANTED ASSISTANCE FROM OUR TECHNICAL SERVICES IN PROVIDING HIM WITH AN IDENTITY WHICH WOULD BE OTHER THAN HIS OWN," HE SAID.

CUSHMAN SAID HUNT PROVIDED NO DETAILS, SAYING ONLY THAT HE "WAS WORKING TO A GOOD PURPOSE IN THE INTERESTS OF THE COUNTRY."

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JURY 5-15

LOS ANGELES (UPI) -- THE DISTRICT ATTORNEY'S OFFICE HERE IS LISTING UP WHITE HOUSE WATERGATE FIGURES--POSSIBLY INCLUDING JOHN EHRLICHMAN--TO TESTIFY BEFORE A GRAND JURY INVESTIGATING THE ELLSBERG BURGLARY.

CHARLES COLSON, FORMER SPECIAL COUNSEL TO THE WHITE HOUSE, AND EGIL "BUD" KROGH, EHRLICHMAN'S FORMER CHIEF ASSISTANT, HAVE AGREED TO APPEAR VOLUNTARILY, THE LOS ANGELES TIMES REPORTED TODAY.

DEPUTY DISTRICT ATTORNEY RICHARD HECHT WAS SCHEDULED TO MEET IN WASHINGTON TODAY WITH EHRLICHMAN'S ATTORNEY, JOHN J. WILSON, TO DISCUSS AN APPEARANCE BY EHRLICHMAN BEFORE THE GRAND JURY, THE NEWSPAPER SAID.

A BREAK-IN AT THE BEVERLY HILLS OFFICE OF DR. LEWIS FIELDING, DANIEL ELLSBERG'S PSYCHIATRIST, ALLEGEDLY BY THE WATERGATE TEAM, WAS ONE OF THE INCIDENTS THAT LED TO DISMISSAL OF CHARGES AGAINST ELLSBERG AND ANTHONY J. RUSSO IN THE PENTAGON PAPERS TRIAL.

THE BREAK-IN WAS ALLEGEDLY CARRIED OUT BY CUBAN-AMERICANS UNDER THE DIRECTION OF G. GORDON LIDDY AND E. HOWARD HUNT, LATER CONVICTED IN THE WATERGATE CASE.

THE TIMES SAID HUNT AND THE CUBANS HAVE BEEN OFFERED IMMUNITY FROM PROSECUTION IN RETURN FOR THEIR TESTIMONY TO THE GRAND JURY.

AFFIDAVITS TO THE PENTAGON PAPERS TRIAL JUDGE HAVE PORTRAYED THE BREAK-IN AS PART OF A SPECIAL WHITE HOUSE INVESTIGATION OF ELLSBERG, AT EHRLICHMAN'S REQUEST, BY A "PLUMBERS SQUAD" DIRECTED TO PLUG LEAKS OF INFORMATION.

KROGH, IN HIS LETTER TO PRESIDENT NIXON RESIGNING HIS POST AS UNDERSECRETARY OF TRANSPORTATION, SAID HE WOULD "TAKE FULL RESPONSIBILITY" FOR THE INCIDENT.

COLSON, IN A STATEMENT TO THE FBI, SAID THAT EHRLICHMAN AND JOHN DEAN III, FORMER WHITE HOUSE COUNSEL, HAD ORDERED HIM NOT TO TALK ABOUT THE ELLSBERG BREAK-IN TO WATERGATE INVESTIGATORS.

UPI 05-15 06:35 AED

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WASHINGTON CAPITAL NEWS SERVICE

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UPI075

ADD 1 WATERGATE, WASHINGTON (UPI-007)

THE WHITE HOUSE DENIED PRESIDENT NIXON SOUGHT TO PREVENT THE JUSTICE DEPARTMENT FROM PROVIDING INFORMATION THE BURGLARY OF DANIEL ELLSBERG'S PSYCHIATRIST'S OFFICE TO THE ELLSBERG TRIAL COURT IN LOS ANGELES.

PRESS SECRETARY RONALD ZIEGLER SAID, "ANY REFERENCE OR SUGGESTION MADE BY ANYONE THAT THE PRESIDENT WOULD HAVE PROCEEDED IN ANY OTHER WAY THAN TO PROVIDE INFORMATION TO THE COURT ... ARE COMPLETELY UNFOUNDED."

REPORTS HAD SAID NIXON LEARNED APRIL 15 OF PARTICIPATION BY FORMER WHITE HOUSE AIDES IN THE BURGLARY ATTEMPT, WHICH WAS PART OF A 1971 INVESTIGATION INTO LEAKS OF CLASSIFIED GOVERNMENT MATERIAL.

THE REPORTS, QUOTING WHITE HOUSE AND JUSTICE DEPARTMENT SOURCES, SAID NIXON OBJECTED TO PROVIDING THE COURT INFORMATION ON THE BURGLARY ON GROUNDS THAT IT WOULD ADVERSELY AFFECT THE NATIONAL SECURITY.

"I'M NOT GOING TO COMMENT ON DETAILS OF STORIES WHICH HAVE APPEARED WHICH ARE BASED ON VARIOUS SOURCES," ZIEGLER TOLD NEWSMEN IN A LENGTHY EXCHANGE. "I SIMPLY WILL MAKE THIS OBSERVATION: THE FACT OF THE MATTER IS THAT MATERIAL WAS PROVIDED TO THE COURT AT THE DIRECTION OF THE PRESIDENT."

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UPI076

(HUNT)

WASHINGTON (UPI) -- THE DEFENSE DEPARTMENT SAID TODAY THAT E. HOWARD HUNT TRIED SEVERAL TIMES IN THE FALL OF 1971 TO SEE SECRET PENTAGON DOCUMENTS AND THAT HIS REQUESTS WERE TURNED DOWN.

A PENTAGON SPOKESMAN DID NOT SPECIFY THE NATURE OF THE MATERIAL SOUGHT, BUT SAID HE THOUGHT HUNT WANTED ACCESS TO THE CLASSIFIED CABLES WHICH HE LATER OBTAINED FROM THE STATE DEPARTMENT.

HUNT AND G. GORDON LIDDY WERE THEN WHITE HOUSE AIDES TRYING TO TRACK DOWN THE SOURCES OF NEWS LEAKS AFTER DANIEL ELLSBERG HAD COPIED THE PENTAGON PAPERS TRACING U.S. INVOLVEMENT IN VIETNAM AND MADE THEM AVAILABLE TO THE NEW YORK TIMES AND OTHERS.

THE REQUESTS BY HUNT, AND POSSIBLY BY LIDDY, WERE DENIED BECAUSE OF A "FIRMLY ESTABLISHED POLICY OF THE SECRETARY OF DEFENSE THAT IN LEGAL MATTERS WE RESPOND ONLY TO THE DEPARTMENT OF JUSTICE," SAID THE PENTAGON SPOKESMAN, JERRY W. FRIEDHEIM.

UPI 05-09 12:49 PED

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UPIO 77

ADD 1 HUNT, WASHINGTON (UPI-076)

FRIEDHEIM SAID HUNT MADE HIS PENTAGON REQUESTS SHORTLY BEFORE GOING TO THE STATE DEPARTMENT, WHICH HAS SAID HUNT WAS ALLOWED TO COPY 240 TELEGRAMS TRANSMITTED BETWEEN THE STATE DEPARTMENT AND THE U.S. EMBASSY IN SAIGON.

THE REQUESTS WERE TURNED DOWN, HE SAID, BY THE DEFENSE DEPARTMENT'S GENERAL COUNSEL, J. FRED BUZHARDT, AND THAT THEN DEFENSE SECRETARY MELVIN R. LAIRD "TO THE BEST OF MY KNOWLEDGE ... WAS AWARE OF THE REQUESTS."

FRIEDHEIM MADE THE COMMENTS IN A BRIEFING FOR REPORTERS AS FORMER PRESIDENTIAL AIDE CHARLES W. COLSON APPEARED AT THE FEDERAL COURTHOUSE. AN ATTORNEY WITH COLSON SAID HE WOULD TESTIFY VOLUNTARILY BEFORE THE FEDERAL GRAND JURY INVESTIGATING THE WATERGATE SCANDAL.

UPI 05-09 12:52 PED

Mr. Felt _____
 Mr. Baker _____
 Mr. Callahan _____
 Mr. Cleveland _____
 Mr. Conrad *JWAF*
 Mr. Gebhardt *JWAF*
 Mr. Jenkins _____
 Mr. Marshall *LSM*
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 Mr. Mintz _____
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UPI133

(ELLSBERG)

LOS ANGELES (UPI) -- THE PENTAGON PAPERS TRIAL APPEARED ON THE VERGE OF A COURT-ORDERED DISMISSAL OF ALL CHARGES THURSDAY AFTER AN FBI REPORT REVEALED THAT DANIEL ELLSBERG HAD BEEN WIRETAPPED BUT THE FACT WITHHELD THROUGHOUT THE TRIAL.

U.S. DISTRICT COURT JUDGE MATT BYRNE ORDERED ARGUMENTS FRIDAY MORNING ON THROWING OUT THE ENTIRE CASE AFTER FIVE MONTHS OF TRIAL IN VIEW OF THE DISCLOSURE OF THE ELECTRONIC SURVEILLANCE OF ELLSBERG'S TELEPHONE CONVERSATIONS IN 1969 AND 1970.

IN HIS COURTROOM COMMENTS, BYRNE MADE IT EVIDENT THAT HE WAS ALMOST SATISFIED THAT ELLSBERG AND CODEFENDANT ANTHONY RUSSO SHOULD GO FREE.

THE DEFENSE WAS HOLDING OUT FOR AN OUTRIGHT JUDGMENT OF ACQUITTAL "REMOVING ANY STAIN" FROM ELLSBERG AND RUSSO, BUT BYRNE SAID HE WOULD "FOLLOW THE APPROPRIATE PROCEDURE."

DURING ANOTHER SPECTACULAR DAY AT THE TRIAL, BYRNE STERNLY WARNED THE PROSECUTION THAT HE WANTED TO KNOW IMMEDIATELY WHAT HAD BEEN THE DISPOSITION OF ANY TAPES OR RECORDS OF THE WIRETAP.

PROSECUTOR DAVID NISSEN, WHO STATED HE WAS NOT AWARE OF THE WIRETAP HIMSELF UNTIL THURSDAY, CALLED THE FBI IN WASHINGTON AND THEN REPORTED HE HAD NOT YET BEEN ABLE TO COME UP WITH ANSWERS TO BYRNE'S QUESTIONS.

THE JUDGE ORDERED A RECESS SO THE GOVERNMENT COULD MAKE FURTHER INVESTIGATION.

ASKED BY NEWSMEN ABOUT THE REVELATIONS OF THE WIRETAP, NISSEN SAID "IT'S BEEN OBVIOUS FOR SOME TIME THAT I MUST HAVE BEEN WIRETAPPED. IT'S ODD THAT MR. NISSEN DIDN'T KNOW ABOUT IT. WE ALL KNEW ABOUT IT."

DEFENSE LAWYER LEONARD BOUNDIN SAID THAT ELLSBERG AND RUSSO WOULD NOT BE SATISFIED WITH ANY DISMISSAL OF THE CHARGES OF CONSPIRACY, ESPIONAGE AND THEFT ON GROUNDS OF GOVERNMENT MISCONDUCT.

BOUNDIN SAID THE DEFENSE WANTED TO ARGUE FOR A MOTION OF A JUDGMENT OF ACQUITTAL BY THE COURT--AN ACT WHICH WOULD EXONERATE THE TWO ON GROUNDS THE GOVERNMENT HAD NOT BEEN ABLE TO PROVE ITS CASE AGAINST THEM.

UPI 05-10 07:16 PED

79 MAY 23 1973

WASHINGTON CAPITAL NEWS SERVICE

JWAF 15

Mr. Felt _____
 Mr. Baker _____
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UPI 147

(CIA)

WASHINGTON (UPI) -- PRESIDENT NIXON'S THREE FORMER TOP AIDES WERE "DEEPLY INVOLVED" IN A CIA-AIDED PLOT TO SPY ON DANIEL ELLSBERG AND BURGLARIZE HIS PSYCHIATRIST'S OFFICE, SEN. STUART SYMINGTON, D-MO., SAID MONDAY.

NAMED IN SECRET TESTIMONY FOR THE FIRST TIME IN THE SPY PLOT AGAINST THE FORMER PENTAGON PAPERS DEFENDANT WERE, ACCORDING TO SYMINGTON, H.R. HALDEMAN, JOHN DEAN, AND JOHN EHRLICHMAN.

TESTIMONY GIVEN TO THE ARMED SERVICES COMMITTEE BY LT. GEN. VERNON WALTERS, CIA DEPUTY DIRECTOR, INDICATED THAT ALL THREE MEN WERE INVOLVED IN THE AFFAIR, SYMINGTON SAID.

SYMINGTON SAID WALTERS' TESTIMONY, WHICH HE DESCRIBED AS "VERY ILLUMINATING," ALSO INDICATED "THERE WERE OTHER MATTERS BESIDES THE ELLSBERG CASE IN WHICH THE WHITE HOUSE WAS INVOLVED THE CIA." HE DID NOT ELABORATE.

NOT RECORDED

46 MAY 22 1973

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79 MAY 23 1973

WASHINGTON CAPITAL NEWS SERVICE

"WHAT I LEARNED TODAY WAS HOW DEEPLY INVOLVED WERE HALDEMAN AND EHRLICHMAN AS WELL AS DEAN," SYMINGTON SAID. HALDEMAN AND EHRLICHMAN WERE UP TO THEIR EARS IN THIS MATTER."

GEN. ROBERT CUSHMAN, COMMANDANT OF THE MARINE CORPS AND FORMER CIA DEPUTY DIRECTOR, TOLD A DIFFERENT SENATE SUBCOMMITTEE LAST FRIDAY THAT THE CIA HELPED HOWARD HUNT, WHO MASTERMINDED THE ELLSBERG BURGLARY, AT EHRLICHMAN'S REQUEST. CUSHMAN SAID HE AUTHORIZED THE CIA TO PROVIDE HUNT WITH DISGUISES AND OTHER EQUIPMENT USED IN THE LOS ANGELES BURGLARY.

SYMINGTON SAID HE HAD HEARD TESTIMONY IMPLICATING EHRLICHMAN AND DEAN BUT "HADN'T REALIZED HOW MUCH HALDEMAN WAS INVOLVED IN WHAT WENT ON. MR. HALDEMAN WAS INVOLVED VERY HEAVILY."

SYMINGTON SAID HE BELIEVED, AFTER HEARING WALTERS' TESTIMONY, THAT "WHATEVER THE CIA WAS ORDERED TO DO WAS AT THE DIRECTION OF THE TOP STAFF PEOPLE AT THE WHITE HOUSE."

THE ARMED SERVICES COMMITTEE HAS ALSO HEARD TESTIMONY FROM CIA DIRECTOR JAMES SCHLESINGER, WILLIAM COLBY, DEPUTY DIRECTOR OF OPERATIONS, AS WELL AS CUSHMAN.

CUSHMAN LAST WEEK TOLD THE SUBCOMMITTEE, WHICH HAS BEEN CONDUCTING ITS OWN INVESTIGATION INTO THE ELLSBERG SPY PLOT, THAT HIS DECISION TO HELP HUNT "WAS DONE IN CONFORMITY WITH ORDERS FROM HIGHER AUTHORITY."

WHEN ASKED BY EHRLICHMAN TO AID HUNT AND SEVERAL OF HIS CO-CONSPIRATORS IN THE BREAK-IN TO COPY ELLSBERG'S PSYCHIATRIC RECORDS, CUSHMAN SAID:

"I THEN DREW THE FOLLOWING CONCLUSION...THAT HOWARD HUNT HAD BEEN HIRED BY THE WHITE HOUSE TO ACT IN THE SECURITY FIELD AND THAT THE CENTRAL INTELLIGENCE AGENCY WAS BEING ORDERED TO ASSIST HIM."

UFI 05-14 04:31 FED

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 INTELLIGENCE DIV.

Thompson

ju *W. J. Sullivan*

UPI012

(ELLSBERG)

LOS ANGELES (UPI) -- DANIEL ELLSBERG AND HIS LAWYERS APPEARED ELATED, CONVINCED THAT THE REVELATION THURSDAY OF YET ANOTHER GOVERNMENT TRANSGRESSION--A WIRETAP BY THE FBI, ALL RECORDS OF WHICH HAVE MYSTERIOUSLY DISAPPEARED--DROVE THE FINAL NAIL INTO THE COFFIN OF THE PROSECUTION'S CASE IN THE PENTAGON PAPERS TRIAL.

THE PROSECUTION HAS NOW BEEN DEALT SO MANY BLOWS THAT DEFENSE ATTORNEYS HAVE TURNED THEIR ATTENTION TO ARGUING ON THE MANNER IN WHICH--NOT IF--IT SHOULD BE THROWN OUT OF COURT.

THAT COULD HAPPEN TODAY.

U.S. DISTRICT COURT JUDGE MATT BYRNE ORDERED ATTORNEYS TO RETURN TO COURT TODAY READY TO ARGUE A MOTION TO DISMISS ALL CHARGES AGAINST ELLSBERG AND HIS CODEFENDANT, ANTHONY RUSSO, AS A RESULT OF THE DISCLOSURE THAT THE FBI OVERHEARD A CONVERSATION BY ELLSBERG.

IT WAS OVERHEARD WHILE AGENTS WERE TAPPING THE PHONE OF MORTON HALPERIN, FORMER DEPUTY ASSISTANT SECRETARY OF DEFENSE AND ADVISER TO HENRY KISSINGER.

HALPERIN IS A CONSULTANT TO THE DEFENSE TEAM, AND WAS AN IMPORTANT DEFENSE WITNESS.

BYRNE ANNOUNCED THAT HE HAD RECEIVED FROM THE GOVERNMENT A MEMORANDUM FROM ACTING FBI DIRECTOR WILLIAM RUCKELSHAUS INDICATING THAT RUCKELSHAUS LEARNED OF THE WIRETAP ON MAY 8.

FBI MEMO SAID IT HAD MAINTAINED RECORDS OF THE TAPS, BUT THAT THEY WERE NOW MISSING.

UPI 05-11 08:45 AED

NOT RECORDED

46 MAY 22 1973

79 MAY 23 1973

WASHINGTON CAPITAL NEWS SERVICE

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ELLSBERG 5-11

DAY LD

BY KATHLEEN NEUMEYER

LOS ANGELES (UPI) -- ONE OF HIS DEFENSE ATTORNEYS GRABBED DANIEL ELLSBERG'S HAND AND EXCLAIMED IN DELIGHT: "IT WON'T BE LONG NOW."

ELLSBERG AND HIS LAWYERS APPEARED ELATED, CONVINCED THAT THE REVELATION THURSDAY OF YET ANOTHER GOVERNMENT TRANSGRESSION--A WIRETAP BY THE FBI, ALL RECORDS OF WHICH HAVE MYSTERIOUSLY DISAPPEARED--DROVE THE FINAL NAIL INTO THE COFFIN OF THE PROSECUTION'S CASE IN THE PENTAGON PAPERS TRIAL.

"I THINK THIS IS GOING TO BE THE CAMEL (SIC) THAT BROKE THE CAMEL'S BACK," EXULTED ELLSBERG, EMERGING FROM THE COURTHOUSE.

THE PROSECUTION HAS NOW BEEN DEALT SO MANY BLOWS THAT DEFENSE ATTORNEYS HAVE TURNED THEIR ATTENTION TO ARGUING ON THE MANNER IN WHICH--NOT IF--IT SHOULD BE THROWN OUT OF COURT.

THAT COULD HAPPEN TODAY.

U.S. DISTRICT COURT JUDGE MATT BYRNE ORDERED ATTORNEYS TO RETURN TO COURT TODAY READY TO ARGUE A MOTION TO DISMISS ALL CHARGES AGAINST ELLSBERG AND HIS CODEFENDANT, ANTHONY RUSSO, AS A RESULT OF THE DISCLOSURE THAT THE FBI OVERHEARD A CONVERSATION BY ELLSBERG.

IT WAS OVERHEARD WHILE AGENTS WERE TAPPING THE PHONE OF MORTON H. HALPERIN, FORMER DEPUTY ASSISTANT SECRETARY OF DEFENSE AND ADVISER TO HENRY A. KISSINGER.

"I DO NOT INTEND TO DELAY PAST TOMORROW MORNING," THE JUDGE WARNED JUSTICE DEPARTMENT ATTORNEYS. BYRNE MADE IT CLEAR HE WAS INCLINED TO DISMISS CHARGES BECAUSE OF THE REVELATION.

THE JUDGE HAS HAD THE JUSTICE DEPARTMENT UNDER ORDERS FOR A YEAR TO REVEAL ANY WIRETAPPING AGAINST ELLSBERG OR THE DEFENSE TEAM. HALPERIN IS A CONSULTANT TO THE DEFENSE TEAM, AND WAS AN IMPORTANT DEFENSE WITNESS.

NOT RECORDED

48 MAY 23 1973

79 MAY 23 1973

WASHINGTON CAPITAL NEWS SERVICE

THE PROSECUTION HAS MAINTAINED THROUGHOUT THE TRIAL THAT THERE WERE NO SUCH WIRETAPS. A WIRETAP ISSUE CAUSED A MISTRIAL EARLIER IN THE CASE.

THE WIRETAP REVELATION CAME AT THE BEGINNING OF THURSDAY'S SESSION, WHEN BYRNE WAS SCHEDULED TO HEAR ARGUMENTS ON A MOTION FOR A JUDGMENT OF ACQUITTAL.

ALTHOUGH THE DEFENSE PREVIOUSLY HAS ASKED FOR A DISMISSAL, ATTORNEY LEONARD BOUDIN SAID NOW THE DEFENSE WOULD PREFER AN ORDER OF ACQUITTAL TO "REMOVE ANY STAIN" FROM ELLSBERG AND RUSSO.

"TO HAVE THE CASE DISAPPEAR BECAUSE OF THE EXTREME WRONGDOING OF THE GOVERNMENT WOULD BE AN INSUFFICIENT REMEDY FOR THE DEFENDANTS, AS INDIVIDUALS ACCUSED OF A CRIME," BOUDIN SAID.

HOWEVER, BYRNE SAID THE WIRETAP MATTER HAD TAKEN PRECEDENCE AND HE WOULD "FOLLOW THE APPROPRIATE PROCEDURE."

BYRNE ANNOUNCED THAT HE HAD RECEIVED FROM THE GOVERNMENT A MEMORANDUM FROM ACTING FBI DIRECTOR WILLIAM RUCKELSHAUS INDICATING THAT RUCKELSHAUS LEARNED OF THE WIRETAP ON MAY 8.

THE FBI MEMO SAID IT HAD MAINTAINED RECORDS OF THE TAPS, BUT THAT THEY WERE NOW MISSING.

"IF THERE ARE NO LOGS AND RECORDS I WANT TO KNOW WHY NOT," THE JUDGE TOLD THE PROSECUTORS. "IF THEY ARE GONE, I WANT TO KNOW WHERE."

UPI 05-11 04:09 AED

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UPI 187

(CIA)

WASHINGTON (UPI) -- TWO CIA DOCTORS TESTIFIED TODAY THE PSYCHOLOGICAL PROFILE PREPARED BY THE CIA ON DANIEL ELLSBERG WAS THE FIRST ONE EVER WORKED UP ON AN AMERICAN CITIZEN.

DR. JOHN TIETJEN, DIRECTOR OF MEDICAL SERVICES, AND DR. BERNARD MALLOY, CHIEF OF THE PSYCHIATRIC DIVISION, SAID THEY BOTH HAD MISGIVINGS ABOUT THE PROJECT.

TIETJEN AND MALLOY TESTIFIED FOR ABOUT TWO HOURS BEFORE THE SENATE APPROPRIATIONS SUBCOMMITTEE WHICH SUPERVISES THE ACTIVITIES OF THE CIA.

AFTER THE CLOSED-DOOR SESSION, CHAIRMAN JOHN MCCLELLAN, D-ARK., TOLD REPORTERS REPORTERS THE TWO DOCTORS TOLD THE SUBCOMMITTEE THE "PERSONALITY ASSESSMENT" WAS THE FIRST DONE ON AN AMERICAN.

USUALLY, SUCH PSYCHIATRIC REPORTS ARE MADE ON FOREIGN LEADERS BASED ON ALL AVAILABLE INFORMATION ON THEM.

MCCLELLAN SAID THE TWO DOCTORS TESTIFIED THEY WERE APPREHENSIVE ABOUT THE PROPRIETY OF DRAWING UP A PROFILE ON ELLSBERG AND EXPRESSED THEIR MISGIVINGS TO THEIR SUPERIORS.

ASKED IF HE MEANT RICHARD HELMS, NOW AMBASSADOR TO IRAN, AND GEN. ROBERT CUSHMAN, NOW COMMANDANT OF THE MARINE CORPS, MCCLELLAN REPLIED YES.

UPI 05-10 07:08 PED

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019A

CIA 5-11

DAY LD

BY STEVE GERSTEL

WASHINGTON (UPI) -- MARINE CORPS COMMANDANT ROBERT E. CUSHMAN WAS SUMMONED TODAY BY TWO SENATE COMMITTEES TO EXPLAIN WHY HE PROVIDED CLOAK-AND-DAGGER TOOLS TO A WHITE HOUSE AIDE SPYING ON DANIEL ELLSBERG, NOW ON TRIAL FOR LEAKING THE PENTAGON PAPERS.

CUSHMAN, WHO RETURNED FROM EUROPE THURSDAY NIGHT AFTER CUTTING SHORT HIS TRIP, APPEARS BEFORE A SENATE APPROPRIATIONS SUBCOMMITTEE (NOON EDT) AND THE SENATE ARMED SERVICES COMMITTEE (2 P.M.).

CENTRAL INTELLIGENCE DIRECTOR JAMES R. SCHLESINGER TESTIFIED BEFORE THE APPROPRIATIONS SUBCOMMITTEE WEDNESDAY THAT CUSHMAN, THEN DEPUTY DIRECTOR OF THE CIA, WAS THE PERSON WHO AUTHORIZED GIVING WATERGATE CONSPIRATOR E. HOWARD HUNT EQUIPMENT LATER USED IN THE BURGLARY OF THE OFFICE OF ELLSBERG'S PSYCHIATRIST.

SCHLESINGER SAID CUSHMAN ORDERED CIA SUBORDINATES TO GIVE HUNT THE BURGLARY-RELATED TOOLS ON AN IMPLIED RECOMMENDATION OF EX-WHITE HOUSE AIDE JOHN ENRICHMAN.

CUSHMAN, COMMANDANT SINCE JAN 1, 1972, WAS CALLED BACK FROM VIETNAM IN 1969 WHERE HE COMMANDED ALL LAND FORCES IN THE NORTHERN BATTLE ZONE. BY PRESIDENT NIXON TO BECOME DEPUTY DIRECTOR OF THE CIA.

CUSHMAN, A VETERAN OF WORLD WAR II, KOREA, AND VIETNAM, WAS NIXON'S NATIONAL SECURITY AIDE DURING NIXON'S SECOND TERM AS VICE-PRESIDENT.

NOT RECORDED

46 MAY 22 1973

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WASHINGTON CAPITAL NEWS SERVICE

SCHLESINGER, WHO TOOK COMMAND OF THE CIA THIS YEAR, TESTIFIED THAT CUSHMAN RECEIVED A TELEPHONE CALL JULY 8, 1971, FROM ENRICHMAN SAYING THAT HUNT HAD BEEN APPOINTED AS A WHITE HOUSE SECURITY CONSULTANT.

ENRICHMAN RECENTLY RESIGNED AS NIXON'S DOMESTIC ADVISER AND HUNT, A ONE-TIME CIA AGENT, PLEADED GUILTY LAST JANUARY TO THE BUGGING AND BREAK-IN AT THE WATERGATE OFFICES OF THE DEMOCRATIC NATIONAL COMMITTEE.

HUNT, ACCORDING TO THE TESTIMONY, THEN VISITED CUSHMAN AND SAID THAT HE HAD BEEN CHARGED WITH A "HIGHLY SENSITIVE MISSION BY THE WHITE HOUSE TO ELICIT INFORMATION FROM AN INDIVIDUAL WHOSE IDEALOGY HE WAS NOT SURE OF."

SCHLESINGER ADDED THAT, ON CUSHMAN'S ORDERS, THE CIA GAVE HUNT AN ALIAS--EDWARD JOSEPH WARREN--AND PROVIDED HIM WITH A FALSE SOCIAL SECURITY CARD, DRIVER'S LICENSE, AND SEVERAL MEMBERSHIP CARDS AND FURNISHED HIM WITH DISGUISE MATERIALS INCLUDING A WIG, GLASSES AND A SPEECH ALTERATION DEVICE, A TAPE RECORDER IN A TYPEWRITER CASE AND A CAMERA DISGUISED AS A TOBACCO POUCH.

TWO CIA DOCTORS TESTIFIED BEFORE THE APPROPRIATIONS SUBCOMMITTEE THURSDAY THAT A PSYCHOLOGICAL PROFILE PREPARED BY THE CIA OF ELLSBERG WAS THE FIRST WORKED UP ON AN AMERICAN CITIZEN.

DR. JOHN TIETJEN, DIRECTOR OF MEDICAL SERVICES, AND DR. BERNARD MALLOY, CHIEF OF THE PSYCHIATRIC DIVISION TESTIFIED FOR ABOUT TWO HOURS BEHIND CLOSED DOORS.

CHAIRMAN JOHN L. MCCLELLAN, D-ARK., LATER RELATED THEIR TESTIMONY TO REPORTERS.

MCCLELLAN SAID THE DOCTORS WERE APPREHENSIVE ABOUT THE PROPRIETY OF THE PROJECT AND RELAYED THEIR MISGIVINGS TO CUSHMAN AND THEN CIA DIRECTOR RICHARD HELMS, NOW AMBASSADOR TO IRAN. HELMS IS SCHEDULED TO TESTIFY NEXT WEEK.

UPI 03-11 01:28 AED

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060A

COLSON 5-11

DAY LD

WITH ELLSBERG

LOS ANGELES (UPI) -- JOHN EHRLICHMAN GAVE ORDERS LESS THAN TWO MONTHS AGO TO A FORMER WHITE HOUSE LAWYER TO CONCEAL THE ELLSBERG BURGLARY FROM THE FBI, THE LAWYER TOLD FEDERAL AGENTS.

THE CHARGE WAS MADE BY CHARLES W. COLSON, FORMER WHITE HOUSE SPECIAL COUNSEL, IN AN INTERVIEW WITH THE FBI SUBMITTED TO THE JUDGE IN THE PENTAGON PAPERS TRIAL THURSDAY.

COLSON SAID HE GOT SIMILAR INSTRUCTIONS FROM JOHN DEAN III.

U.S. DISTRICT COURT JUDGE MATT BYRNE HAS ORDERED THE GOVERNMENT TO REVEAL ALL IT CAN ABOUT THE BREAK-IN AT THE OFFICE OF DR. LEWIS FIELDING, ELLSBERG'S PSYCHIATRIST. ACCORDING TO AFFIDAVITS FILED WITH THE COURT, CONVICTED WATERGATE CONSPIRATORS E. HOWARD HUNT AND G. GORDON LIDDY MASTERMINDED THE BREAK-IN, AIMED AT FINDING ELLSBERG'S RECORDS AS PART OF A SPECIAL WHITE HOUSE INVESTIGATION OF ELLSBERG ORDERED BY PRESIDENT NIXON.

COLSON SAID HE DID NOT KNOW IN ADVANCE ABOUT THE BREAK-IN PLANS, AND FIRST LEARNED ABOUT IT AT A MEETING SOMETIME LATER, WHEN HE WAS TOLD THAT IT HAD BEEN A FAILURE AND TURNED UP NO USEFUL INFORMATION ABOUT ELLSBERG.

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46 MAY 22 1973

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79 MAY 23 1973

WASHINGTON CAPITAL NEWS SERVICE

COLSON WAS NOT CERTAIN WHO WAS AT THAT MEETING, BUT SAID IT MIGHT HAVE BEEN A PRIVATE ONE WITH EHRLICHMAN, THE PRESIDENT'S DOMESTIC AFFAIRS CHIEF UNTIL HE RESIGNED BECAUSE OF THE WATERGATE SCANDAL.

COLSON SAID HE WAS TOLD BY EHRLICHMAN, AND BY DEAN, THAT THE BREAK-IN WAS "A NATIONAL SECURITY MATTER OF THE HIGHEST CLASSIFICATION AND NOT TO BE DISCUSSED WITH ANYONE."

DEAN, WHO WAS WHITE HOUSE COUNSEL AND COLSON'S BOSS, WAS FIRED IN NIXON'S HOUSECLEANING.

"MR. COLSON WAS ASKED IF HE HAD ANY OTHER DISCUSSIONS WITH WHITE HOUSE STAFF MEMBERS ABOUT THE BURGLARY," THE FBI REPORTS SAID.

COLSON "RECALLED IN CONNECTION WITH THE WATERGATE INVESTIGATION, PRIOR TO THE TIME WHEN HE WAS QUESTIONED BY THE FBI AND GAVE A DEPOSITION TO MR. (EARL) SILBERT OF THE U.S. ATTORNEY'S OFFICE, HE ASKED JOHN DEAN, COUNSEL TO THE PRESIDENT, WHAT TO DO IF 'THE PENTAGON PAPERS QUESTION CAME UP'," THE FBI REPORT SAID.

"DEAN TOLD HIM THAT IF ASKED HE WAS NOT TO DISCUSS THE MATTER" ON GROUNDS OF NATIONAL SECURITY, COLSON TOLD THE INTERVIEWERS.

"HE (DEAN) WOULD INTERRUPT SUCH QUESTIONS IF PRESENT," THE REPORT QUOTED COLSON AS SAYING.

COLSON "RECALLED RECEIVING THE SAME INSTRUCTIONS FROM MR. EHRLICHMAN IN LATE MARCH OR APRIL, 1973," THE REPORT SAID.

UPI 05-11 06:00 AED

Mr. Felt _____
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UPI089

(ELLSBERG BURGLARY)

LOS ANGELES (UPI) -- THE DISTRICT ATTORNEY'S OFFICE HERE IS LITIGATING UP WHITE HOUSE WATERGATE FIGURES -- POSSIBLY INCLUDING JOHN EHRLICHMAN -- TO TESTIFY BEFORE A GRAND JURY INVESTIGATING THE ELLSBERG BURGLARY.

CHARLES COLSON AND EGIL KROGH HAVE AGREED TO APPEAR VOLUNTARILY, THE LOS ANGELES TIMES REPORTED TODAY.

DEPUTY DISTRICT ATTORNEY RICHARD HECHT WAS SCHEDULED TO MEET IN WASHINGTON TODAY WITH EHRLICHMAN'S ATTORNEY, JOHN WILSON, TO DISCUSS AN APPEARANCE BY EHRLICHMAN BEFORE THE GRAND JURY, THE NEWSPAPER SAID.

A BREAK-IN AT THE BEVERLY HILLS OFFICE OF DR. LEWIS FIELDING, DANIEL ELLSBERG'S PSYCHIATRIST, ALLEGEDLY BY THE WATERGATE TEAM, WAS ONE OF THE INCIDENTS THAT LED TO DISMISSAL OF CHARGES AGAINST ELLSBERG AND ANTHONY J. RUSSO IN THE PENTAGON PAPERS TRIAL.

THE BREAK-IN WAS ALLEGEDLY CARRIED OUT BY CUBAN-AMERICANS UNDER THE DIRECTION OF GORDON LIDBY AND HOWARD HUNT, LATER CONVICTED IN THE WATERGATE CASE.

THE TIMES SAID HUNT AND THE CUBANS HAVE BEEN OFFERED IMMUNITY FROM PROSECUTION IN RETURN FOR THEIR TESTIMONY TO THE GRAND JURY.

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Grand Jury Hearings Set

Nixon Ex-Aides Face L.A. Probe

By Leroy F. Aarons
 Washington Post Staff Writer

LOS ANGELES, May 16—County law enforcement officials are considering pressing a conspiracy case against top White House officials and former officials in connection with the break-in at the office of Daniel Ellsberg's psychiatrist, it was indicated today.

That intent was made apparent today with the announcement that four of the five men who allegedly participated in the burglary operation had accepted immunity to testify before a Los Angeles County grand jury here beginning June 5.

The four, named by Los Angeles County District Attorney Joseph Busch at a press conference today, are Howard Hunt, Bernard

Barker, Felipe de Diego and Eugenio R. Martinez.

Hunt has sworn before a Washington grand jury investigating Watergate, that he, Barker, De Diego, Martinez and G. Gordon Liddy had taken part in the burglary operation in Beverly Hills, and that they were part of a much broader secret White House squad that took orders from as high up as John Ehrlichman, former assistant to the President for domestic affairs.

Busch said he was considering summoning Ehrlichman and a half dozen other present or former administration officials before the grand jury. He said two men had already accepted invitations to appear. They are Egil Krogh, former White House assistant to Ehrlichman, who had direct charge

of the special unit, known as the "plumbers," that plotted the burglary; and Charles Colson, former special White House counsel.

The others, whose appearances were described as in various stages of discussion, are:

John Dean, former presidential counsel; L. Patrick Gray, former acting FBI director; Gen. Robert E. Cushman, former deputy CIA director; Richard Helms, former CIA director; David Young, ex-White House aide who shared supervision of the plumbers with Krogh, and G. Gordon Liddy, Hunt's co-worker in the burglary operation.

One source, not Busch, said that the grand jury very definitely could be asked to return a conspiracy

indictment should the evidence warrant it. Conspiracy is a felony in California carrying a penalty of one to 14 years imprisonment.

Busch said he had sent investigators to Washington to "extend personal invitations to those persons who we believe can be of assistance to us in this matter." He added he was hoping the method would work "rather than resorting to any other legal process." The implication was that he would subpoena witnesses if necessary.

Busch cautioned that it would be "premature" to speculate about possible criminal charges and that he would make no further statements in the case. Pretrial publicity has already presented "difficult" problems," he said.

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Accent on Intelligence

By Lyman B. Kirkpatrick Jr.

PROVIDENCE, R. I.—For the many who have served their nation in the Central Intelligence Agency, and have faithfully observed their oath to uphold and defend the Constitution of the United States both during and after their Government service, the Watergate affair is not only repugnant but disappointing and saddening.

The bill of particulars is damning. Two former staff officers and four other ex-employees of the C.I.A. were among those involved in the Watergate break-in. The agency, upon a request from the White House, helped in an operation against Daniel Ellsberg. The State Department, also on a request from the White House, provided classified cables to E. Howard Hunt Jr., convicted Watergate conspirator, who used them as background in an effort to smear President Kennedy. The persistent innuendos that the Watergate was actually a C.I.A. operation has rekindled fears that the "department of dirty tricks" was used to subvert domestic institutions.

In fairness to C.I.A. and other departments involved, the role of the White House staff should not be underestimated. It is not the custom of the bureaucracy to question a call from the executive offices. It is assumed that the President's people know what they are doing. While they may not inform the President of all details, it is usually believed they are operating under approved policy guidelines.

Traditionally, Americans have worried about a Federal bureaucracy cloaked in secrecy acting with impunity to enforce the wishes of an all-powerful executive. To many, the C.I.A. had become the epitome of this evil following the Bay of Pigs and accounts of operations involving the National Student Association and other United States-based foundations. Thus to some the C.I.A. is solely the President's personal action arm.

Confidence in the C.I.A. is not enhanced when most of what one reads about it is bad. Presidential and Congressional statements about the agency usually are confined to cryptic expressions of confidence or reports of committee hearings in executive session.

Perhaps it all could be summed up in the question: if the C.I.A. trains its operatives to overthrow the governments of other nations, is it not possible that these same people might attempt to overthrow the Government of the United States when they disagree with its policies?

The presumption is that the C.I.A. is engaged in a continual process of deposing governments unpopular with the United States. This is hardly true today. Evidence is accumulating that United States policy is maturing to accept other forms of government even though they might not conform to our criteria. While it has been acknowledged that the United States did succeed in changing a government in Guatemala, and failed in a similar effort at the Bay of Pigs, there is a growing conviction that such efforts are counterproductive in the long run and serve more to defeat than enhance United States policy.

An implied assumption to the question is that the C.I.A. decides what governments to overthrow. This is not, and never has been, the case.

The C.I.A.'s covert operations are undertaken only after approval by "higher authority." What is true is that C.I.A. operatives in the field and officers in Washington have influenced policy, and on occasion have acted independently abroad. The first instance reflects poorly on the policy level at State, Defense and the White House, and is obviously not the case today. When C.I.A. men in the field have acted too independently, the United States ambassadors sent them home.

The question assumes that the C.I.A. is training a breed of experts in subversion who will seek employment in the same field upon leaving the agency: an assumption seemingly confirmed by the Watergate affair.

Actually only a small and rapidly diminishing fraction of the C.I.A. per-

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Mr. Baker _____
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~~sonnel are engaged in political warfare,~~
a dying remnant of cold war operations. Most C.I.A. personnel are in intelligence work: collecting, analyzing, estimating, supporting; and it is their unheralded efforts that are sullied and obscured.

The sordid mess of the Watergate re-emphasizes the necessity for tight controls over and persistent and critical review of all intelligence activities by the appropriate committees of the Congress. In my opinion the Congress has done a good job of checking on C.I.A. activities. But if the impression has been created that the C.I.A. is solely the action arm of the executive, then the legislature must assure us this is not so. In fairness to the nation, the President and the Central Intelligence Agency, the public must be confident that the C.I.A. serves the nation and serves it well.

Lyman B. Kirkpatrick Jr., professor of political science at Brown University, was a high-ranking C.I.A. official from 1947 to 1965.

Letters to The Times

Dismissal of Charges Against Ellsberg

The Times editorial (May 13), "... And Justice Has Been Done," properly condemned the government prosecution of the Ellsberg case and praised Judge Matt Byrne's view of justice. Largely overlooked, however, has been the odious character of the statements by Daniel Ellsberg himself, the champagne-sipping jubilation of his followers at the recognition of illicit federal practices, and the real issue at stake in the trial.

Ellsberg has claimed that his trial and acquittal will help reestablish the rightful value of personal honesty, by shaming the government's attempts to prosecute him for releasing the Pentagon Papers. This self-serving attitude takes for granted what was in question all along: whether it is proper knowingly to break the law in publicizing material which is thought by the lawbreaker to be improperly restricted and necessary to the democratic process. Ellsberg admitted he was the source of the publication of the documents.

The discovery of indefensible government practices in the prosecution of this case should shake the rest of us more than Ellsberg, for whom it proved a positive boon. But even the self-righteous defendant should not be jubilant; nor should he be happy over his acquittal on such sordid grounds if he is serious about his love for this government. Is a back-slapping celebration the honest citizen's response to a sobering public revelation in a court of justice that his government has stooped so low?

What is really at stake, and is now undiscussed, is whether a government has the right, or even the duty, to prosecute those who would take established national security law into their own hands and decide, above the law, outside of recognized procedures, what is and is not fit for public consumption, foreign and domestic. This self-proclaimed honest man, defender of the country, example of public virtue, claims by the same token to be more honest than the law. The vain and fruitful

trial of Ellsberg by the government should have been strictly on the merits of actions publicly admitted, indeed bragged about, by the defendant.

ALAN F. BALCH
Arcadia

Some individuals will rebel at the notion that Ellsberg and Anthony Russo should be acquitted when they have clearly committed acts that have been defined as criminal. But I would argue that there could be no greater affirmation of the American governmental process than to allow them to go free.

My argument is not based upon my feelings about the Pentagon Papers or the nature of the act of disclosure. My feelings would be the same regardless of who was involved or what crimes had been committed.

The men we refer to as our founding fathers established a number of ideals that they considered central to their proposed form of government. They wrote, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated..."

They stated also, "No person shall... be deprived of life, liberty, or property without due process of law."

These statements were more than simple rules for the administration of the judicial process; they are part of an underlying philosophy that the rights of individuals generally should not be invaded even if this means that specific wrong-doers will evade punishment for their crimes.

In order to serve this value the judicial system has in the past, and should now, deter the sort of illegal government activity that has characterized the Ellsberg case by taking away the incentive to commit such crimes; e.g., the conviction of these defendants.

Now many will balance the crimes of the government against the threat presented by the acts of Ellsberg and Russo and conclude that the government should prevail. But such reasoning must fail for two reasons. First, such a test would grant

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Mr. Baker
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Mr. Herington
Ms. Herwig
Mr. Mintz
Mrs. Neenan

Mr. Conroy
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2 to 5 am

The Washington Post
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the power to balance away any or all of our constitutional rights. And second, the test, as applied in this case, strikes a balance between the wrong concerns. What should be weighed is the benefit to be derived from certifying this type of "end-justifies-means" government criminality for general use against the resultant threat to the rights of all of us.

Watergate alone should teach us what result would prevail.

LEE J. BLACKMAN
Los Angeles

Your editorial is to be criticized along with the sensationalism that the general news media have created by their coverage of the case. Has justice really been done and what about the rights of the law-abiding citizens? The fact that Ellsberg and Russo admitted taking the papers and have had these charges dismissed is disgustingly appalling, particularly for those of us that adhere daily to the very same laws governing defense and intelligence information.

The outcome of this case will surely encourage further disregard and violations (at the expense of the taxpayer) of laws that are necessary for the preservation of this country by those seeking notoriety.

MAL KONG
Van Nuys

Those who think the Ellsberg-Russo trial should have continued ought to be thankful they live in a country that does not allow its citizens to be prosecuted by burglars and liars.

How much longer must we tolerate a government so corrupt it cannot carry out the legal prosecution of a person indicted for compromising the security of our country?

There is nothing more frightening than the realization that our government, led by a lawyer and staffed with lawyers, has become a greater threat to our security than a person who discloses the contents of top secret documents.

HERBERT M. DUGGER
San Pedro

The charges against Russo and Ellsberg have been dismissed. I have only one question. Has justice really been served? I believe it has not. Two facts concerning the Pentagon Papers trial remain: (1) Ellsberg took documents that did not belong to him. (2) Ellsberg had no right to decide which facts labeled "top secret" should be announced publicly. He acted without any authority whatsoever. It is a sad commentary on our system of justice if the facts of a case are so completely overlooked.

ELIZABETH G. REIFSNIDER
Glendora

Judge Matt Byrne was twice approached by John Ehrlichman with the President's assent, during the Pentagon Papers trial, with an offer of the permanent directorship of the FBI. The judge quite properly declined to discuss it until the trial was over.

Now the trial is over, with no possibility of any appeals, and Judge Byrne has proven his integrity and independence. He is free to accept, and has shown his suitability for the presidential nomination.

There could scarcely be a better test of the sincerity of Richard Nixon's intentions, since he personally received the judge during one of those meetings, than the speed with which he moves to seize this opportunity and nominate Byrne for the FBI job—or at the very least, to summon Byrne to the White House for a serious discussion of it.

Any hesitation, any delay in doing so, on the other hand, will indicate that the two Ehrlichman meetings and the presidential introduction were simply shabby, clumsy attempts—involving Mr. Nixon himself—to subvert justice by influencing the judge of a trial in progress.

JAMES E. BRODHEAD
Sherman Oaks

The dismissal of charges against Ellsberg will certainly be a shock to thousands of aerospace and defense workers.

We believed in the necessity to keep our defense plans secret from potential enemies. We took seriously our signed and sworn oaths to safeguard classified defense documents and prevent their falling into unauthorized hands. We carefully locked up our papers. When we traveled, we kept briefcases close at hand, avoided night clubs, and slept with the stuff.

And now this guy hands over classified documents to the newspapers—not confidential or secret but top secret, no less—and gets away with it.

JOHN B. LATHROP
Glendale

Senators in Shouting Match Over Ellsberg Testimony

By George Lardner Jr.
Washington Post Staff Writer

In testimony that produced a partisan senatorial shouting match, Daniel Ellsberg charged yesterday that his prosecution in the Pentagon papers case was "part of a scheme" to re-elect President Nixon.

He put the blame on what he called "the conspiratorial apparatus" that the Nixon administration inherited and that Ellsberg said had once even subtly corrupted him.

"It would be foolish to suppose that only individuals are involved," Ellsberg told a panel of Senate subcommittees headed by Sen. Edmund S. Muskie (D-Maine). "It is the system that has gone awry."

Freed of the charges against him last week because of government misconduct ranging from burglary to wiretapping, Ellsberg acknowledged that his conclusion of a link between his own prosecution and the political espionage behind the Watergate scandal was circumstantial.

But he repeatedly noted that Watergate conspirator E. Howard Hunt—whom the White House hired shortly after Ellsberg had been first indicted—kept popping up in clandestine operations designed not only to discredit him but Democratic presidential candidates as well.

Ellsberg charged that Hunt's real assignment, in trying to "smear me," was to find out whether Ellsberg could be turned into "a mud ball that would stick to a [Democratic] presidential candidate."

Ellsberg's allegations were met by an angry series of questions from Sen. Strom Thurmond (R-S.C.) who accused him of unfairly imputing guilt to individuals, such as Mr. Nixon, when they should still be considered innocent.

By contrast, Thurmond complained, Ellsberg's "innocence" of the government's charges of conspiracy, espionage and theft of the Pentagon papers had never been "proved."

Ellsberg replied that he was entitled to a presumption of innocence in a courtroom. But, he said, "that does not oblige me as an American citizen to think that he [Mr. Nixon] had no involvement" in the Watergate case, for example.

"Your guilt or innocence has never been determined by the court," Thurmond persisted near the close of the hearing.

His temper rising, Muskie broke in.

"Your innocence is given to you until proven otherwise," Muskie told Ellsberg. "I disagree with Sen. Thurmond utterly. The Constitution gives him his innocence."

"The court didn't pass on his guilt or innocence," Thurmond shot back again, his face growing red. "They threw out the case, as you well know," he told Muskie, "because of the prosecution's tactics in the case."

Glaring at Thurmond, Muskie said angrily: "Senator, you are guilty of the very posture that you have just attributed to the witness."

"You are guilty yourself," Thurmond shouted at Muskie who began rapping his gavel loudly. Thurmond kept going.

"You are playing politics with this hearing," he told Muskie before subsiding. "You brought him here today to criticize the President of the United States. You are not fit to be a presidential candidate."

After a few seconds' silence, Muskie turned to Ellsberg and apologized "for this display of senatorial temper." The Maine Democrat, who began the round of hearings on government secrecy and executive privilege more than a month ago, said that he did not "bring" Ellsberg to the hearing, but simply "invited" him to testify.

Maintaining an even temper throughout the stormy hearing, Ellsberg outlined a chilling "world of secrecy" within the government: secret reading rooms, each as big as the main room of the New York Public Library, behind nondescript doors at the Pentagon; four-star generals serving as secret couriers, and super-secret documents so tightly held that even the classification stamps on the pages are classified far above "top secret."

"I lived in a world of secrets for 12 years," Ellsberg said of his government service which ended as a special assistant to the Secretary of Defense during the Johnson administration. "I thought I was above the law."

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Mr. Baker ☐
Mr. Callahan ☐
Mr. Cleveland ☐
Mr. Conrad ☒
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Mr. Jenkins ☐
Mr. Marshall ☐
Mr. Miller, E. S. ☒
Mr. Soyars ☐
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Mrs. Neenan ☐

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In that vein, Ellsberg recalled having documents in his Pentagon safe during 1964-65 debates on Vietnam that would have shown that "two Cabinet secretaries [Dean Rusk and Robert McNamara] were lying directly to Senate committees in executive session." Instead of speaking up, Ellsberg said, "I kept my mouth shut."

Government secrecy, Ellsberg charged, has become so pervasive that there are some 20 classifications "above top secret."

"Secrecy corrupts just as power corrupts," Ellsberg said, recalling how he tried to warn White House national security adviser Henry A. Kissinger before he took his current post of what could happen to him. It was in December of 1968 at the Hotel Pierre in New York City, Ellsberg said, and "I wanted perhaps to innoculate him."

Ellsberg, who said he had 12 above-top-secret clearances that few people know even exist, told of telling Kissinger that "the first impact will be . . . that you will feel like a fool. You have written articles and rubbed shoulders for decades with people who had these clearances. But . . . after a week or so of having four-star generals bring you special pouches and briefcases . . . you will forget that you were once a fool and remember only that everyone else is a fool who does not have that information."

Describing his own experiences, Ellsberg said only "the elect" at the Pentagon, for example, know of entire document rooms there behind safe doors, each with a

special guard armed with computerized lists, updated daily, of who may enter.

With four or five of these separate clearances, Ellsberg said, "you become aware that there is no limit to this." He said there could "even be clearances the President doesn't know about."

"I don't say that's the case in Watergate," Ellsberg said. "I don't believe it is. The President likely knows all those details. But could it be withheld from him? The answer is yes."

Of all the above-top-secret clearances, Ellsberg said, "the lowest" is called COMINT (communication intercept—data such as that gained from a wiretap). He estimated that about 120,000 people, all in the executive branch, have that clearance—in contrast to the 400,000 to 500,000 who have "top secret" clearance.

"The next clearance above that," he said, "cuts way down—to about 14,000 to 20,000—a large number but still a small portion of the electorate."

It all amounts, Ellsberg protested, to "a government of espionage cells. The President knows all of this and spends too much of his time running a James Bond apparatus." None of the classifications, Ellsberg added, are

authorized by law—as distinct from executive regulation—except perhaps COMINT.

Besides encouraging the notion that those outside the government "priesthood" have no right to make decisions, Ellsberg said, the system makes it "your duty to lie" when asked about the information.

Ellsberg accused Kissinger of doing just that in telling newsmen in June of 1971—when the Pentagon papers were first disclosed in The New York Times—that he hadn't read the Pentagon papers until then.

"That was a lie," Ellsberg charged. He recalled meeting with Kissinger at San Clemente in 1969, about a year after their talk at the Hotel Pierre, and urging him to read the Pentagon papers and "to learn" from them. Ellsberg said Kissinger told him then that "yes, he had read the Pentagon papers. . . . He said, 'But we make decisions very differently now.'"

Ellsberg told the senators that he was convinced that newly installed White House special counsel J. Fred Buzhardt lied at Ellsberg's trial in January in testifying—as the Pentagon's general counsel then—that he had never heard of Pentagon studies concluding that the disclosure of the Pentagon papers would not affect "national defense." Buzhardt also said at the trial that he gave no order that the studies should be "removed from the files" where they had been lodged.

Turning to his charges of a connection between his prosecution and the discrediting of Democratic presidential candidates, including Muskie, Ellsberg pointed out that E. Howard Hunt was hired by the White

House on July 6, 1971, "more than a week after I was indicted." At that time, Ellsberg said, Muskie was leading Mr. Nixon in some polls.

Meanwhile, Ellsberg said, Muskie's advisers included former Defense officials Paul Warnke and Leslie Gelb who had given their copies of the Pentagon papers to the Rand Corp. where Ellsberg was still working. Former Defense Secretary Clark Clifford, another Muskie adviser, also had a copy of the war history.

In short, Ellsberg told Muskie at the hearing, "there was thus a strong circumstantial case for linking the existence of the papers at Rand to your presidential campaign." Ellsberg said that was the reason he took public responsibility for leaking the history to the press; he said then he had never met Muskie.

Finally, Ellsberg said, his indictment charged a conspiracy dating back to March of 1969, although, he said, he did not decide to make the Pentagon papers public until that September. By contrast, he said, March was the month that Muskie adviser Gelb and another old government colleague, Morton Halperin, gave their copies to the Rand Corp.

"The process of my prosecution," Ellsberg concluded, "was part of a scheme to affect the (Democratic presidential) primaries and reelect the President."



By Ken Felt—The Washington Post

Daniel Ellsberg, freed of charges in Pentagon papers case last week, testifies before group of Senate subcommittees.

Mr. Felt ☒
 Mr. Baker _____
 Mr. Callahan _____
 Mr. Cleveland _____
 Mr. Conrad _____
 Mr. Gebhardt ☒
 Mr. Jenkins _____
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 Mr. Mintz _____
 Mrs. Neenan _____

Ellsberg Charges U. S. Suppressed Evidence

By JEROME CAHILL

Washington, May 16 (NEWS Bureau)—Daniel Ellsberg told Senate investigators today that he believed that a government lawyer who joined the White House staff in President Nixon's recent Watergate reshuffle suppressed evidence in the Pentagon Papers trial.

Ellsberg's accusation against former Defense Department general counsel J. Fred Buzhardt touched off an angry exchange between Sen. Strom Thurmond (R-S.C.) and Sen. Edmund S. Muskie (D-Maine) with Thurmond shouting at Muskie at one point, "You are not fit to be a presidential candidate."

'Constitution Gives Innocence'

Ellsberg, making his first Capitol Hill appearance since a Los Angeles federal judge tossed out the government's espionage-theft case against him last week, testified at a hearing chaired by Muskie. In discussing the Pentagon Papers trial he noted that retired Air Force Col. Edwin A. Miller had testified that Buzhardt allegedly tried to cover up a report favorable to Ellsberg. He said he believed Miller, rather than an earlier denial by Buzhardt that he knew nothing of the report.

This angered Thurmond, who once employed Buzhardt as a staff assistant. He upbraided Ellsberg for suggesting that the former defense official was guilty of perjury without benefit of a trial. Then Thurmond observed that the Pentagon Papers case was dismissed without determining Ellsberg's guilt or innocence.

"Senator, I disagree with you utterly," said Muskie, his voice rising. The Senator from Maine declared it was not the court's function to establish a defendant's innocence. "The constitution gives him his innocence," he said.

"Senator," said Muskie, addressing Thurmond directly, "you are guilty of the very posture you have attributed to this witness."

"You are guilty yourself!" Thurmond shouted back. "You are playing politics with this hearing! You brought this witness here to criticize the President of the United States. 'You are not fit to be a presidential candidate!'"

Sen. Edward M. Kennedy (D-Mass.) shouted for order and Muskie finally gavelled Thurmond into silence. Then he apologized to Ellsberg for "this display of senatorial temper."

Earlier, Ellsberg told the senators he believed the Nixon administration decided to bring him to trial for the Pentagon Papers theft because

it wanted to link him with Democratic presidential candidates and particularly with Muskie, who was the leading contender at the time.

He said that E. Howard Hunt, convicted Watergate conspirator who engineered the break-in at the office of Ellsberg's psychiatrist, was hired by the White House in midsummer of 1971 after Ellsberg's identity as the source of the Pentagon Papers had been confirmed.

"The question was, could it be made into a mudball that would stick to a presidential candidate," Ellsberg said. To that end, he said, Hunt interviewed Ellsberg's former girl friends and sent some agents to "assault" Ellsberg during an antiwar rally at the Capitol. The attack never came off because the agents were "fought off by some rather small girls" behind the speaker's platform, he said.

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Associated Press Wirephoto

Sen. Edmund S. Muskie (left) talks with Daniel Ellsberg before
Ellsberg testified at Senate hearing yesterday.

(Mount Clipping in Space Below)

Busch Believes Ehrlichman Is Willing to Testify

DA Says Ex-Nixon Aide
Seems Ready to Talk About
Ellsberg Doctor's Break-in

BY WILLIAM FARR

Times Staff Writer

Dist. Atty. Joseph Busch said Wednesday that former White House aide John D. Ehrlichman has "expressed a willingness" to testify before a local grand jury looking into the break-in at the office of Daniel Ellsberg's psychiatrist.

However, Busch told a press conference that no formal agreement had been reached with President Nixon's former chief adviser on domestic affairs to appear during the June 5-8 hearing scheduled here.

Asked whether Ehrlichman would be subpoenaed if he did not voluntarily agree to appear, the district attorney said:

"That is one of the things we are discussing now."

Others Agreeing to Talk

In addition to reporting on the negotiations with Ehrlichman, Busch announced that the following "cast of characters" had agreed to testify at the hearings:

—Egil (Bud) Krogh, former key assistant to Ehrlichman; and Charles Colson, onetime special counsel to the President, both of whom have voluntarily agreed to appear.

—Convicted Watergate break-in participants E. Howard Hunt Jr., Bernard L. Barker and Eugenio R. Martinez, plus Felipe DeDiego, one of their associates who lives in Miami Beach. All four have been promised immunity from further prosecution in return for their testimony here.

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I-3 Los Angeles Times
Los Angeles, Calif.

Date: 5/17/73
Edition: Thursday final
Author: William Farr
Editor: William F. Thomas
Title: MC LEB

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Classification: 105-27952*

Submitting Office: Los Angeles

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Reportedly Planned Burglary

Hunt already has told a federal grand jury that he planned the 1971 Labor Day weekend burglary of Dr. Lewis J. Fielding's Beverly Hills office along with Watergate coconspirator G. Gordon Liddy.

Barker, Martinez and DeDiego reportedly all have admitted to district attorney investigators that they entered Fielding's office looking for Ellsberg's psychiatric records.

Busch also said Dep. Dist. Atty. Richard Hecht, while in Washington, D.C., this past week, started negotiations for the grand jury appearances of four other persons supposedly involved in the Ellsberg affair.

They were identified as Richard Helms, former CIA director and now U.S. ambassador to Iran; Gen. Robert Cushman, Marine Corps commandant who served as deputy CIA director under Helms; John Dean III, fired White House legal counsel, and Liddy.

Will Take Charge

Busch told reporters that he would personally present the case to the grand jury with the assistance of Dep. Dist. Attys. Hecht and Stephen Trott.

Busch said his staff also has contacted the attorney for recently resigned FBI Acting Director L. Patrick Gray to determine "whether or not a need exists for Mr. Gray to appear before our grand jury."

The grand jury investigation also would "inquire into the circumstances surrounding the alleged concession by Elmer Davis with respect to the Fielding entry," Busch added.

Beverly Hills police had closed the Fielding break-in case when Davis reportedly confessed to the burglary shortly after he was arrested Oct. 7, 1971, for stealing money from a purse at a Wilshire Blvd. dress shop.

Davis has denied making the confession and jail records show he

could not have committed the burglary at Fielding's office because he was in custody at the time on a petty theft charge.

Busch said Davis, who is now serving time at Folsom prison, will be subpoenaed to appear before the grand jury.

Regarding the possibility of indictments being returned on the Fielding incident, Busch said:

"It would be premature to make any statement regarding possible criminal charges that may be considered at the present time until sworn grand jury testimony has been received and evaluated in the matter."

Busch said he and federal prosecutors involved in the various Watergate-connected investigations are concerned about the massive publicity caused by the almost daily disclosures on the scandals.

He closed his press conference at the Criminal Courts Building by stating:

"Due to problems of pre-trial publicity in criminal cases, I cannot elaborate on our investigation beyond this statement. We have approximately 2½ weeks to prepare our presentation for the grand jury. We have a lot of work to do.

"As you can understand, we will not be having future news conferences on this matter. The purpose of the news conference today was to clarify reports which have appeared in the press and to answer inquiries on the status and thrust of our investigation."

According to Busch, investigators have been checking into the Sept. 5, 1971, break-in at the office of Dr. John Lungren, President Nixon's medical adviser. "They have not found anything of any significance and no indication whatsoever if there is any connection with the burglary at Dr. Fielding's," Busch said.

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UPI013

(ELLSBERG)

LOS ANGELES (UPI) -- DEFENSE LAWYERS MOVED FOR A DISMISSAL OF CHARGES AGAINST DANIEL ELLSBERG AND ANTHONY RUSSO YESTERDAY FOLLOWING A DISCLOSURE THAT THE WHITE HOUSE HAD BEEN CONDUCTING ITS OWN INVESTIGATION OF THE PENTAGON PAPERS CASE.

U.S. DISTRICT COURT JUDGE MATT BYRNE TOOK THE MOTION AND ONE FOR MISTRIAL UNDER SUBMISSION.

DEFENSE LAWYERS ALSO ALLEGED THE FEDERAL GOVERNMENT TRIED TO BRIBE THE JUDGE "IN THE VIRTUAL PRESENCE OF THE PRESIDENT" -- A REFERENCE TO A MEETING BETWEEN BYRNE AND FORMER DOMESTIC ADVISER JOHN D. EHRLICHMAN AT THE WESTERN WHITE HOUSE LAST MONTH. BYRNE HAS CONFIRMED HE WAS INVITED THERE BY EHRLICHMAN, BRIEFLY GREETED THE PRESIDENT AND WAS TOLD BY EHRLICHMAN HE WAS A CANDIDATE FOR ANOTHER POST. THE WHITE HOUSE HAS CONFIRMED IT WAS THE DIRECTORSHIP OF THE FBI.

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55 MAY 17 1973

WASHINGTON CAPITAL NEWS SERVICE

THE ATTORNEY

named no individuals but he had asked at the Pentagon papers trial for the summoning of former Atty. Gen. John Mitchell.

White House aides John Ehrlichman and H. R. Haldeman, ousted presidential counsel John Dean, former FBI acting director L. Patrick Gray and a host of other Nixon aides.

Stan Sheinbaum, the defense fund raiser at whose home the victory party was held into the early morning hours, estimated that the case and the trial had cost \$900,000. He said about \$840,000 had been raised through contributions.

A poll of the jurors at their homes after the dismissal revealed that several favored acquittal and most of the others were "leaning" toward it. (The Associated Press said seven jurors said they were for acquittal).

In his brief remarks at the news conference, Ellsberg said there had been a victory but "the war is not over."

"There have been 145,000 tons of bombs dropped on Cambodia since the so-called cease fire — more than was dropped on Japan in all of World War II," he said.

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Ellsberg Case Merged the Misdeeds

A-5 BY OSWALD JOHNSTON

Star-News Staff Writer

I . . . feel that whether a person steals Larry O'Brien's secret papers or steals the Pentagon papers, he should be punished. . . . If you are going to purloin documents, why is there a double standard about purloining re-election documents and purloining the Pentagon papers?—Vice President Agnew, Oct. 29, 1972.

Can a responsible press hold that in Ellsberg's betrayal of his oath of secrecy, and his theft of secret government documents, his political ends justified the means, while in the Watergate affair the same ends were totally unjustified?—Claire Booth Luce, May 3, 1973.

The administration claim that the Watergate case and the Pentagon papers case were somehow two sides of the same coin was utterly demolished in the Los Angeles federal court Friday.

Expressly citing government misconduct in the case that in at least one instance extended to criminal behavior, Judge W. Matthew Byrne Jr. dismissed all charges against Daniel Ellsberg and Anthony Russo for stealing and copying the Pentagon's study of the Vietnam war.

In consequence, as a result of its own misdeeds, the administration lost its chance to assert through a successful prosecution of Ellsberg its claim that dissemination of material deemed "classified" is on its face a crime.

"THERE ARE no rules now," one dismayed member of the defense establishment grumbled last week, as the Los Angeles trial, after a series of revelations of government misconduct in the case, approached what appeared then to be an inevitable dismissal of all charges the government had brought.

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"Anybody can leak anything he wants," the source, a former Pentagon official, said. "And the government has nobody to blame but itself."

The trial record of the last few weeks, however, has revealed far more than mere ineptitude on the part of the government in securing its case against Ellsberg and Russo.

Through a series of chance coincidences, it became revealed that some of the same motives, techniques and activities were enlisted in behalf of the government in the Pentagon papers case during 1971 as in the Watergate case during 1972—and by the same team of E. Howard Hunt and G. Gordon Liddy.

On April 27, barely a week before Mrs. Luce told a gathering of newspaper editors in Washington that the Pentagon papers leak to the press was a crime equal in infamy to the Watergate break-in, Byrne revealed in Los Angeles that the office of Ellsberg's psychiatrist had been burglarized by Hunt and Liddy.

ON MAY 4, the day after Mrs. Luce spoke, Byrne released sworn testimony by Hunt to the Watergate grand jury revealing that the burglary of the psychiatrist was carried out on what he conceived to be orders from White House domestic affairs chief John D. Ehrlichman and one of his aides, Egil Krogh Jr.

Hunt's testimony also revealed that the Central Intelligence Agency, in an action on the borderline of a federal law forbidding domestic operations by the CIA, supplied Hunt with undercover equipment and did so at the request of Ehrlichman.

In sum, what was revealed in the closing days of the Pentagon papers trial was that the government, during 1971, had already assembled a team capable of criminal behavior to advance administration policies.

Emerging as they did as the Watergate case bid fair to engulf the whole Nixon administration in its widening scandal, these revelations had the effect in the public mind of superimposing one set of misdeeds upon another, so that both cases became inextricably intertwined, rather than balanced against each other as administration apologists once hoped they would.

The possibility exists that the political espionage of Watergate would never have been authorized in behalf of President Nixon's re-election efforts had the apparatus for setting up such an operation not been already assembled at the time of the Pentagon papers, a year earlier.

Despite some recent sketchy circumstantial evidence to the effect that the FBI knew ahead of time that Ellsberg had secreted a copy of the Pentagon study of the Vietnam war the administration was stunned when the New York Times began publishing the study June 13, 1971.

A GOVERNMENT-wide investigation was launched at once, with FBI agents fanning out into the Pentagon and State Department in search of leaks.

But Ellsberg, first named publicly as the source of the leak within three days of the first installment of the Pentagon papers' publication, surrendered to federal authorities in Boston June 28. He admitted freely that he passed the papers to the Times and other papers and declared, "I am prepared for all consequences." He was indicted the same day.

Nevertheless, even though the case was solved, Nixon's White House staff assembled a task force, ostensibly to "study declassification procedures," which apparently concentrated most of its energies on investigating Ellsberg.

Ehrlichman was put at the head of the team, with Krogh his chief deputy. On July 1 a member of Henry A. Kissinger's staff, David Young, joined the team on extended loan from the National Security Council.

Within a week of its formation, the team was ready to function, and Ehrlichman sought undercover help. In early July, E. Howard Hunt, a former CIA agent, joined the antileak team, reportedly at the suggestion of White House special counsel Charles W. Colson.

In late July, Liddy, who had just been fired from a job with the Treasury department, was hired on by Hunt with the assent of Krogh. Hunt was paid a consultant's fee of \$100 a day through Colson's office, but Liddy received a direct White House salary.

On July 7 or 8, according to CIA records, Ehrlichman telephoned Gen. Robert E. Cushman, then deputy director of the agency, to advise him that Hunt was a White House security consultant and, in

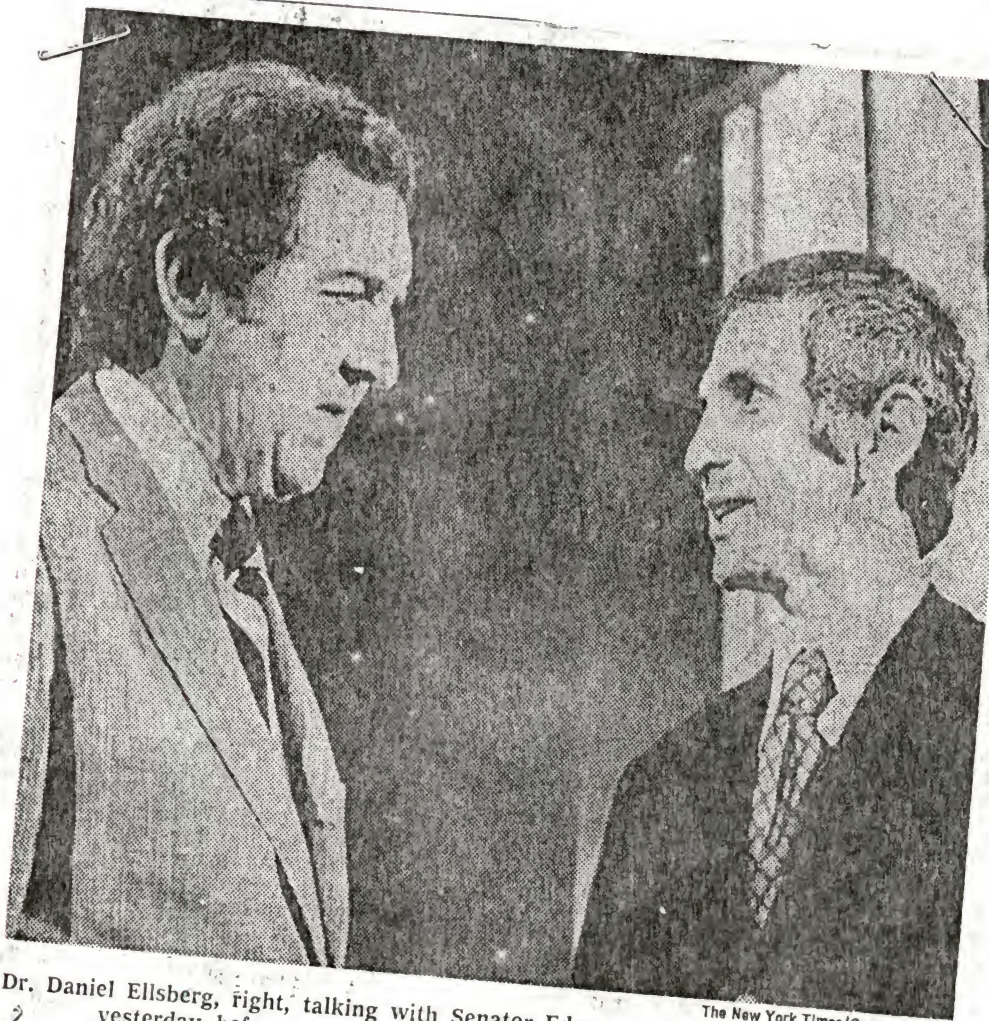
Cushman's words, "that Hunt would come to see me and request assistance which Mr. Ehrlichman requested that I give."

AS THE record later showed, the team thus assembled, with the CIA assistance requested of Cushman, planned and carried out the burglary of Ellsberg's psychiatrist on Sept. 3. Actually doing the breaking and entering were Cuban emigres recruited by Hunt for that job. They were recruited again nine months later for the break-in at Democratic headquarters in the Watergate complex.

Judge Byrne summed up the team's activities during 1971 this way:

"After the original indictment, at a time when the government's rights to investigate the defendants are narrowly circumscribed, White House officials established a special unit to investigate one of the defendants in this case."

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Dr. Daniel Ellsberg, right, talking with Senator Edmund S. Muskie before testifying yesterday before a Senate subcommittee on Government secrecy.

The New York Times/George Tames

Warned Kissinger, Ellsberg Says

FRED BARNES
Star-News Staff Writer

Daniel Ellsberg revealed today that he warned presidential adviser Henry A. Kissinger in late 1968 his thinking might be perverted by access to secret national security information.

Ellsberg said he delivered the warning to Kissinger during a meeting in a New York hotel shortly before Kissinger became President Nixon's top advisor for national security affairs.

But when he spoke to Kissinger a year later, Ellsberg said, "I recognized a man who had been eating the honeydew of secret information for a year. I couldn't talk to him."

FREE OF criminal charges in the Pentagon Papers case, Ellsberg told of his two chats with Kissinger in testimony before a special Senate subcommittee which is exploring executive privilege and government secrecy.

Judge William Matthew Byrne Jr. of federal court in Los Angeles dismissed conspiracy, espionage and theft charges against Ellsberg and Anthony J. Russo Jr. last week, declaring that the prosecution of them was tainted by government misconduct.

Ellsberg's testimony today was his first public appearance since his trial ended. Wearing a blue pin-striped suit and looking thin and pale, Ellsberg delivered a 45-minute lecture to senators on what he considers to be the evils of government secrecy.

He focused particularly on the meetings with Kissinger, though he added that he didn't really know Kissinger that well.

At the time of the December 1968 meeting, Ellsberg was still working for the Rand Corp., a think-tank for the Defense Department. Kissinger was getting ready to leave his post as a Harvard University professor to join the White House staff.

During the 1968 conversation, Ellsberg said he told Kissinger that "you're about to get 10, 15, 20 (security) clearances of the sort you never knew existed. Their very names are classified."

ELLSBERG said that Kissinger would "feel like a fool" at first discovering huge quantities of secret information whose existence had been unknown to him.

But soon, Ellsberg said he told Kissinger, "you will forget that you were once a fool and remember only that everyone else is a fool who doesn't have this (secret) information."

Ellsberg said he warned Kissinger that he would be forced to lie. And Ellsberg added that he predicted that Kissinger would be quite successful at it.

EVENTUALLY, Ellsberg said he warned Kissinger "You will become, if you yield to these processes, unable to learn from anyone" who doesn't have access to the same volumes of secret defense information. And it is at that contempt for the American people takes

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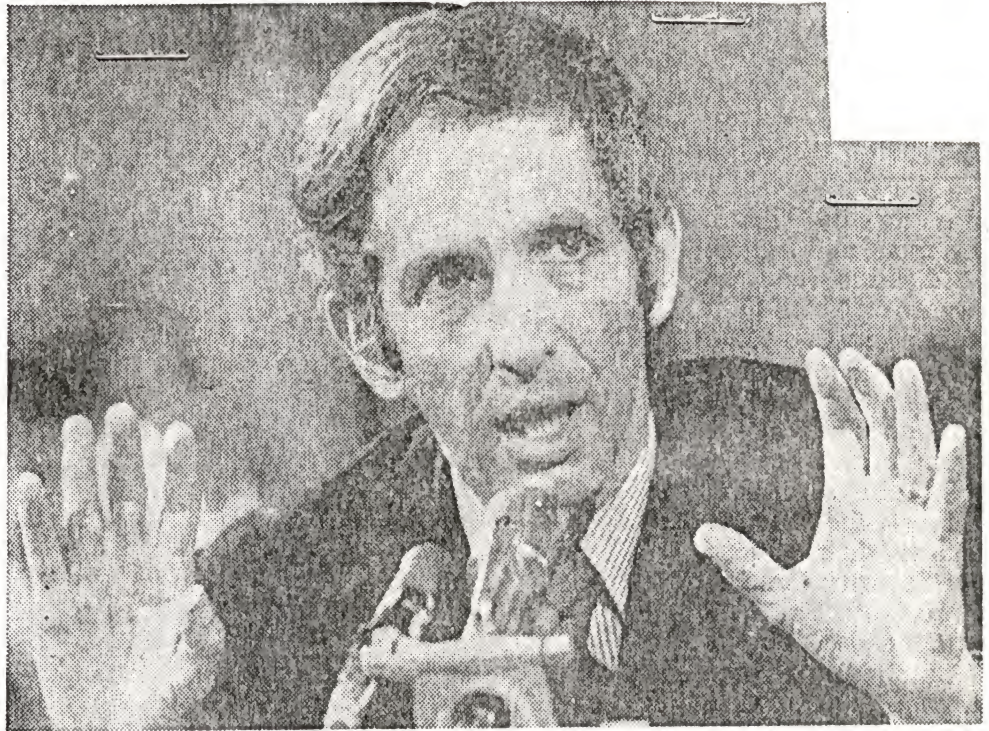
root in the thinking of top officials and their trust in democracy fades.

Ellsberg urged Congress to dismantle what he called "a conspiratorial bureaucracy" that has taken hold of the federal government. He conceded that as a consultant to the Defense Department for 12 years he had been part of the "conspiratorial style in executive decision-making."

Ellsberg told the senators he believes he was prosecuted for leaking the Pentagon papers not because he violated national security but because of possible links to Democratic candidates.

And, said Ellsberg, the strongest ties would have been to Sen. Edmund S. Muskie, D-Maine, chairman of the hearing.

Ellsberg said he had never met Muskie but that several other individuals involved in the massive Pentagon study of U.S. involvement in Vietnam advised the Muskie presidential campaign. He pointed out that at the time Muskie was the leading contender for the Democratic presidential nomination and was leading President Nixon in some popularity polls.



Daniel Ellsberg testifies today before the Senate Government Operations and Judiciary subcommittees.

L. A. Probers Seek To Call Ehrlichman

LOS ANGELES, May 15 (UPI)—A county deputy district attorney was reported meeting today with John Ehrlichman's attorney to discuss the former White House aide's possible appearance at a grand jury investigation of the burglary of Daniel Ellsberg's psychiatrist.

A spokesman in the Los Angeles district attorney's office said the deputy, Richard Hacht, was discussing the matter in Washington with John J. Wilson, lawyer for Ehrlichman.

District Attorney Joseph Busch has announced his office will present evidence to the grand jury on June 5-6-7-8

which may result in criminal indictments growing out of the burglary of the Beverly Hills office of Dr. Lewis Fielding in September, 1971.

Charles Colson, former special counsel to the White House, and Egil Krogh, Ehrlichman's former chief assistant, have agreed to appear voluntarily, the spokesman said.

Ehrlichman has acknowledged that he set up a special squad which, among other things, carried out the burglary in an investigation of the leak of the Pentagon Papers—an act which played a large part in dismissal of charges against Ellsberg and Anthony J. Russo.

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SECURITY MEASURE—Daniel Ellsberg is checked with metal detector before being allowed on Washington flight Tuesday at Los Angeles International Airport. He is to testify today before joint session of three Senate panels on government secrecy. On his arrival in the capital, he said the FBI knew he was copying top-secret documents a year before he released Pentagon Papers.

Times photo by John Malmin

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 The Los Angeles Times PART II, P. 1

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IMMUNITY HINTED IN COAST INQUIRY

Testimony Reported Sought Against Ehrlichman

By STEVEN V. ROBERTS

Special to The New York Times

LOS ANGELES, May 15—Local prosecutors are focusing their investigation of the break-in at the office of Dr. Daniel Ellsberg's psychiatrist on John D. Ehrlichman, until recently one of President Nixon's most trusted advisers.

According to sources close to the case, virtually all potential witnesses are being offered immunity for their testimony against Mr. Ehrlichman and Egil Krogh Jr., formerly Mr. Ehrlichman's chief assistant.

"We are interested in getting the principals, whomever they may be," said a spokesman for District Attorney Joseph P. Busch of Los Angeles County.

Legal Situation Unclear

The legal situation is still murky, and the grand jury will not begin hearing testimony here until June 5.

News of the burglary was first disclosed two weeks ago at the trial of Dr. Ellsberg and Anthony J. Russo Jr., who were charged with conspiracy, theft and espionage for their role in taking and copying the Pentagon papers—a secret Government study of the United States involvement in the Vietnam war. Those charges were dismissed last Friday by Federal Judge William Matthew Byrne Jr. after he decided that Government actions in the case had "offended a sense of justice."

The actions that led to the break-in reportedly began after President Nixon voiced deep concern over the leakage of information he considered vital to national security. According to Mr. Ehrlichman, the President ordered a secret White House investigation separate from any efforts made by the Federal Bureau of Investigation.

The job was reportedly assigned to Mr. Krogh, then Mr. Ehrlichman's chief assistant, and David R. Young Jr., on loan from the staff of Henry A. Kissinger, Mr. Nixon's adviser on national security. According to Mr. Krogh, Mr. Ehrlichman approved of using "covert" methods to gather information about Dr. Ellsberg, who had already been indicted in the Pentagon papers case.

Break-in at Doctor's

Mr. Krogh admits that he then ordered the break-in at the Beverly Hills office of Dr. Lewis J. Fielding, Dr. Ellsberg's psychiatrist, on Sept. 3, 1971. Mr. Ehrlichman contends that he learned of the burglary only after it happened, and that he warned the burglars "not to do this again."

But Mr. Ehrlichman apparently never reported the incident to law enforcement authorities. Charles W. Colson, former special counsel to President Nixon, has said that Mr. Ehrlichman told him about the burglary, but warned him it was a "national security matter" and "not to discuss it with anyone."

The five-man burglary squad is said to have included E. Howard Hunt Jr., a former agent for the Central Intelligence Agency, and G. Gordon Liddy, a former F.B.I. man, both of whom were convicted for their roles in the break-in at Democratic party headquarters in the Watergate building about 10 months after the Beverly Hills break-in. The other three were separately Cuban exiles from Miami.

Mr. Ehrlichman has been invited to testify before the grand jury here (but it is still unclear whether he will appear. His lawyer, John J. Wilson, confirmed today that he had talked to representatives of the District Attorney but the lawyer would have no further comment.

Krogh to Testify

Mr. Krogh has already agreed to testify. When he resigned from his new job as Under Secretary of Transportation last week, he told the President that he wanted "to accept full responsibility" for the burglary.

Mr. Hunt and Mr. Colson have also agreed to appear, and the witness list could include the three Cubans and representatives of the C.I.A.. The agency gave Mr. Hunt recording equipment and other devices to use in the burglary after receiving a request from the White House for assistance.

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For the Record

Unsettled Questions A-18 At the Ellsberg Trial

From remarks by Sen. Barry Goldwater (R-Ariz.) in the Senate May 14

As we all know, nothing was settled at the time Judge W. Matthew Byrne Jr. dismissed the charges against Daniel Ellsberg and Anthony Russo Jr. for the theft and distribution of classified government material known in the press as the Pentagon Papers.

After all these months of litigation we still do not know whether people who steal classified information and make it public are to be held accountable under the laws. Nor do we know whether the defense contention that laws protecting classified information run counter to the first amendment have any legal validity.

•Thanks to a group of ill-advised government officials who felt that it was proper and necessary to take the law into their own hands to speed the conviction of civilians who had taken the law into their own hands there are now no rules governing the theft and dissemination of classified government documents. Thanks to a group of self-appointed government officials who called themselves plumbers and who performed with the finesse of plumbers in a case involving the American system of jurisprudence it is now possible for anybody with a purpose to leak any kind of information he can get his hands on. Thanks to stupidity on the part of the government, nothing was settled in Los Angeles. Ellsberg and Russo were not convicted of their crimes; nor were they vindicated on the charges. In fact, nobody won in the Pentagon Papers case except muckrakers in the press who traded upon revealing secret government information and zealots within the government who believe, like Ellsberg, that their judgment is superior to that of men elected to operate the government and who feel that any means—even stealing classified materials—is justified to make their point with the public.

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WEEK-LONG HUNT

Judge in Papers Trial Ended Case in Part Over Lost Material

By JOHN M. CREWDSON

Special to The New York Times

WASHINGTON, May 14—The acting director of the Federal Bureau of Investigation said today that records of 17 wiretaps placed on newsmen and Government officials were discovered last week in a White House safe belonging to John D. Ehrlichman, one of the Presidential assistants who resigned over the Watergate scandal.

The wiretaps included one in which Dr. Daniel Ellsberg was overheard, William D. Ruckelshaus, the F.B.I. chief, said.

The documents, compiled during a 21-month effort to halt disclosures of secret information to the press, were found Friday after a week-long search. F.B.I. agents found the files about an hour after the charges against Dr. Ellsberg, a defendant in the Pentagon papers trial, were dismissed by a Federal judge in Los Angeles, Mr. Ruckelshaus said.

In clearing Dr. Ellsberg and Anthony J. Russo Jr., his co-defendant, Judge William Matthew Byrne Jr. said that the Justice Department's inability to furnish him the wiretap records, which he had requested, was "of greatest significance."

In other developments today involving the Watergate affair: Elliot L. Richardson, the Attorney General-designate, disclosed that two White House aides had suggested candidates for the position of special prosecutor in the Watergate case.

John Stuart Magruder, who

was deputy campaign manager for President Nixon, said that the President was actively involved in campaign planning until a month after the Watergate break-in last June.

Henry A. Kissinger, the President's foreign affairs adviser, said that he had seen summaries from wiretaps placed in 1969 and 1970 but that he had not asked for the taps and had not specifically approved them in advance.

Conversation Cited

At a news conference today, Mr. Ruckelshaus said that the wiretap operation had grown out of a conversation in the spring of 1969 between Mr. Kissinger and J. Edgar Hoover, the late F.B.I. director.

Mr. Ruckelshaus declined to identify 16 of the 17 individuals subjected to the "national security" wiretaps between May, 1969, and February, 1971, on the ground that "the potential harm to be done by the release of these names outweighs the good that may be done."

The Justice Department said last week that one of the Government officials under surveillance as a suspected source of secret information had been Morton Halperin, a former employe of the National Security Council, which Mr. Kissinger heads.

It was in late 1969 and early 1970, while Dr. Ellsberg was talking with Mr. Halperin, or over the Halperin telephone while a guest in the Halperin house, that his conversations were intercepted, Mr. Ruckelshaus said.

Mr. Ehrlichman, who resigned April 30 as Mr. Nixon's assist-

The Washington Post
Times Herald _____

The Evening Star (Washington) _____

The Sunday Star (Washington) _____

Daily News (New York) _____

Sunday News (New York) _____

New York Post _____

The New York Times 1

The Daily World _____

The New Leader _____

The Wall Street Journal _____

The National Observer _____

People's World _____

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ant for domestic affairs, declined to comment today on why he had not revealed the whereabouts of the wiretap records earlier. He was interviewed by reporters outside a Federal grand jury chamber where he had been summoned in connection with the Watergate case.

Mr. Ruckelshaus said that he had ordered an investigation into the wiretapping, which he called "perfectly legal," on May 4, after reading reports of the operation in the press.

The records, which included signed authorizations for the wiretaps and transcripts of recorded conversations, were taken from the F.B.I.'s files in September, 1971, Mr. Ruckelshaus said, and "the F.B.I. accepted the premise that [they] had been destroyed."

Until last Thursday, he said, he had "no reason to believe that the records were still intact." But then an F.B.I. interview with Robert C. Mardian, a former Assistant Attorney General in charge of the Internal Security Division, indicated that "the records possibly still existed and might be in the White House."

It was on Thursday that Judge Byrne demanded that the Justice Department disclose the duration of the wiretap on Mr.

Halperin's telephone, the number of times that Dr. Ellsberg was overheard, and other information contained in the records, which were then in Mr. Ehrlichman's safe.

Mr. Ruckelshaus said today that the names of the reporters and Administration officials placed under surveillance "were supplied through a number of avenues, including the White House and the F.B.I., and that 'one or two' were suggested by John N. Mitchell, the Attorney General at the time.

Two of the wiretaps remained in effect for as short a time as 30 days, he said, and one for as long as 21 months, and all were authorized by Mr. Mitchell under rules, then in effect, requiring only the Attorney General's approval for wiretaps related to national security matters.

Sources familiar with the operation said last week that the four reporters placed under surveillance included two em-

ployed by the New York Times, one by The Washington Post and one by The Sunday Times of London.

Arms Talks Involved

But other sources indicated today that a Post reporter was not involved. The three other reporters, William Beecher and Hedrick Smith of the Times and Henry Brandon of The Sunday Times, all wrote articles on the Strategic Arms Limitation Talks that included secret or sensitive information.

Mr. Ruckelshaus said today that the F.B.I. investigation had shown that, sometime after the wiretaps were removed in February, 1971, the records were placed in the custody of William C. Sullivan, at the time an assistant to Mr. Hoover.

In the summer of that year, he went on, Mr. Sullivan got in touch with Mr. Mardian, "informed him of the nature of these records, and recommended that they be transferred to the White House."

In his F.B.I. interview, Mr. Mardian recalled that Mr. Sullivan had suggested that Mr. Hoover "might use the records in some manner against the Attorney General or the President," according to Mr. Ruckelshaus.

Mr. Ruckelshaus noted that "Mr. Sullivan does not affirm Mr. Mardian's claim." Associates of Mr. Sullivan have said that he was approached in late September, 1971, by Mr. Mardian, who told him that he had been authorized by Mr. Mitchell to retrieve the records. Mr. Sullivan could not be reached for comment.

'A Logical Reason'

In response to a question as to why Mr. Sullivan would have turned the records over, Mr. Ruckelshaus said that there had been "certain rumors" to the effect that Mr. Hoover was at the time in danger of losing his job, presumably by being forced to retire.

"That would account to some extent as to why those files were moved to the White House," he said. "It certainly is a logical reason."

Mr. Mardian delivered the records directly to Mr. Ehrlichman at the White House, Mr. Ruckelshaus said.

He added that two pieces of

F.B.I. correspondence had been found that bore notations in Mr. Hoover's own handwriting indicating that he had been told by Mr. Mitchell that the records had subsequently been destroyed.

Mitchell Denial Cited

Mr. Hoover's internal inquiry into the disappearing records, began in early October, 1971, and ended when these notations were made, Mr. Ruckelshaus said, adding:

"It should be noted that Mr. Mitchell has denied making such a statement to Mr. Hoover. This conflict cannot be resolved because of Mr. Hoover's death."

Attorney General Richard G. Kleindienst, in a statement issued last Feb. 16, said he had received "the strongest personal assurances from Mr. Mitchell that he never authorized or was asked to authorize" the use of wiretaps against newsmen or White House aides.

Mr. Kleindienst also denied at that time, as he has recently, any knowledge of the wiretapping operation. A Justice Department source said today he was "convinced that Kleindienst had nothing to do with it," but that there "seems to be a contradiction" with respect to his affirmation regarding Mr. Mitchell.

An F.B.I. spokesman said that Mr. Ruckelshaus was looking into "all possible violations of law" with respect to the removal of the wiretap records to the White House. He said there was no immediate indication of any wrongdoing on Mr. Ehrlichman's part, but that the possibility that Mr. Sullivan might have acted illegally was being looked into.

Asked why the records had been given to Mr. Ehrlichman, Mr. Ruckelshaus said he assumed that "Mr. Ehrlichman was simply the custodian of those files while they were in the White House, and that his reason was the same as anyone else in the White House for having the files."

Some Taps Continue

He said that, "as best I can recollect," there had been no new wiretaps placed on newsmen since February of 1971, although "there are and were some on Administration officials."

Asked whether any leaks had

been discovered or sources identified by the operation, he replied that he had not yet read all of the files involved, but had uncovered "considerable evidence" that "some of the people in very sensitive positions were giving vent to their opinions rather regularly and rather openly."

L. Patrick Gray 3d, Mr. Ruckelshaus's predecessor, denied during the hearing ~~on his~~ nomination to become permanent F.B.I. director that the bureau had ever been involved in tapping the telephones of newsmen or Government officials.

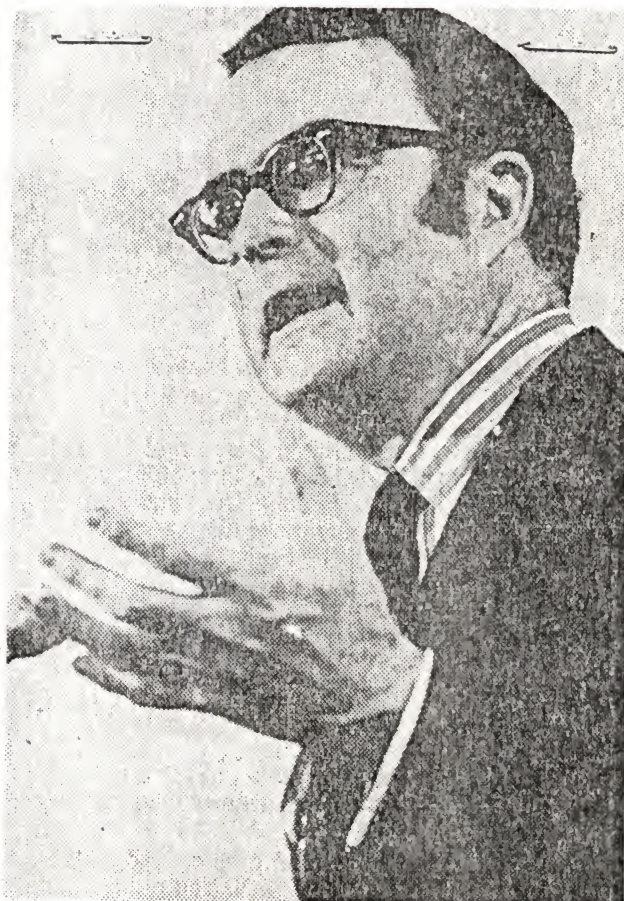
Mr. Ruckelshaus said today, however, that there was "some indication in the record that he [Mr. Gray] might have known" of the operation's existence, but added, "you better ask him."

In a related matter, Mr. Ruckelshaus conceded that there was a "possibility" that papers in the White House files of Mr. Ehrlichman, H. R. Halderman, the former chief of staff, and John W. Dean 3d, the President's former counsel, might have been removed despite an F.B.I. guard placed on the files.

Mr. Ehrlichman and Mr. Halderman both left the Nixon Administration on April 30, and Mr. Dean was discharged the same day.

In response to a question, Mr. Ruckelshaus said there had been "some misunderstanding on the part of the F.B.I. agents" sent to guard the files "as to what their precise function was," and that they had not attempted to inventory papers in the files belonging to the three men, or to log the movement of individual papers into and out of the White House.

But he said, ironically, that the safeguarding procedure, eventually turned over to the Secret Service for implementation, had worked so well on Saturday that "we practically had to arm-wrestle the Secret Service to get them [the wiretap records] out of there [the White House]."



The New York Times/Mike Lien

William D. Ruckelshaus, acting F.B.I. director, telling reporters about missing wiretaps found in White House.

BID TO C.I.A. CITED

3 Nixon Aides Said to Have Asked Further Help on Espionage

By MARJORIE HUNTER

Special to The New York Times

WASHINGTON, May 14—Senator Stuart Symington said today that three high-level White House aides had been deeply involved in trying to enlist the help of the Central-Intelligence-Agency in domestic undercover activities other than the burglary of the office of Dr. Daniel Ellsberg's former psychiatrist.

He identified the three as H. R. Haldeman, John D. Ehrlichman and John W. Dean 3d. Mr. Haldeman and Mr. Ehrlichman have since resigned, and Mr. Dean was dismissed.

Senator Symington said he based his comments on testimony given the Senate Armed Services Committee today by Lieut. Gen. Vernon Walters, the deputy director of the C.I.A.

Declines to Give Details

The Senator, A Missouri Democrat, declined to state the nature of the "undercover activities" for which the help of the C.I.A. had reportedly been sought.

However, he said that the activities had been in addition to the previously disclosed C.I.A. involvement in the break-in at the psychiatrist's office and the C.I.A.'s preparation of a "personality assessment" of Dr. Ellsberg.

"There were other matters besides the Ellsberg case in which the White House tried to get the C.I.A. involved," Senator Symington said the committee had been told.

Asked if one of those undercover projects was the bugging

of the Democratic party headquarters at the Watergate complex here last June, Senator Symington replied: "No."

Ehrlichman Named Earlier

While testimony of other C.I.A. officials last week had named Mr. Ehrlichman as having enlisted agency help in the summer of 1971 in the Pentagon papers case involving Dr. Ellsberg, today's testimony by General Walters was the first indication that Mr. Haldeman and Mr. Dean had sought C.I.A. assistance, too, on behalf of the White House.

"Ehrlichman and Haldeman—particularly Haldeman—were up to their ears in this, along with Dean, in trying to involve the C.I.A. in this whole Watergate mess," Senator Symington said.

General Walters appeared before the committee in closed session. His testimony was not made public, and he made no comments as he departed.

General Walters became deputy director of the C.I.A. in April, 1972, succeeding Gen. Robert E. Cushman Jr., now Commandant of the Marine Corps.

Richard Helms, former C.I.A. director who is now Ambassador to Iran, has been called to testify Wednesday before a Senate appropriations subcommittee and on Thursday before the Armed Service Committee.

Both committees are inquiring into the question of whether the C.I.A. violated the National Security Act of 1947 by assisting the White House in domestic undercover activities.

The law states that the C.I.A. "shall have no police, subpoena, law enforcement powers or in-

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al security functions." The Justice Department has jurisdiction of internal security, espionage and sabotage.

Mr. Helms was director of the C.I.A. at the time the agency, on the request of Mr. Ehrlichman, provided disguises and equipment later used in the break-in of the office of Dr. Ellsberg's psychiatrist.

'Personality Assessment'

He was director, too, at the time the C.I.A. provided a "personality assessment" of Dr. Ellsberg in the summer and fall of 1971, also at the request of a White House aide, David R. Young Jr. Agency officials have said it was the first such study made by the C.I.A. on a American citizen.

Testimony last week by General Cushman and James R. Schlesinger, now director of the C.I.A. indicated that Mr. Helms had been aware of both actions.

Mr. Helms continued as head of the C.I.A. until he was named Ambassador to Iran earlier this spring.

Some members of the Armed Services Committee have said they fledt that the C.I.A. was not at fault in granting White House request for aid in these these two cases. The fault, they have said, lies with the White House.

While General Walters's testimony was not made public, there were strong indications that he had told the committee that the C.I.A. had rejected White House efforts to enlist the agency in further activities.

Saxbe Comments

Senator William B. Saxbe, Republican of Ohio, a member of the committee, said later: "I believe that's why Helms was shipped off to Iran. He wouldn't cooperate."

Another Republican member of the committee, Senator Peter H. Dominick of Colorado, said that he had been "surprised at the direct testimony [of General Walters] which indicated that Haldeman and Ehrlichman were apparently interested in getting the C.I.A. involved."

Senator Dominick said that the general's testimony showed "there were incidents other the Ellsberg case in which White House aides tried to get the C.I.A. involved."

Since General Walters did not join the C.I.A. until the spring of last year, it would appear

that whatever White House efforts that may have been made to enlist further C.I.A. help came since that time, either in 1972 or earlier this year.

Senator Symington and other members of the committee declined to say whether C.I.A. help had been sought in trying to cover up White House involvement in the Watergate scandals.

Long-Time Nixon Aides

Both General Walters and General Cushman were long-time associates of President Nixon. General Cushman had served as Mr. Nixon's military aide while he was Vice Presiden in the nineteen-fifties.

General Walters was a staff assistant to former President Eisenhower and served as Vice President Nixon's interpreter on various foreign tours, including a 1958 South American visit in which the party was showered with rocks and empty cans.

Mr. Nixon was not injured but General Walters was sprayed with glass splinters. General Cushman was also a member of the Nixon party on that trip.



Associated Press

Lieut. Gen. Vernon A. Walters, Deputy Director of Central Intelligence.

(Mount Clipping in Space Below)

FBI chief personally recovers wiretap files in Ehrlichman's safe

Star-Ledger Wire Services

WASHINGTON — Two large boxes of missing wiretap files, including one involving Daniel Ellsberg, have been recovered from the White House office of former presidential aide John D. Ehrlichman, it was disclosed yesterday by Acting FBI Director William D. Ruckelshaus.

The FBI chief personally retrieved the files after he al-

most "had to arm wrestle" with Secret Service agents over them, he said.

Ruckelshaus told a news conference that the records, which became one of the key issues in dismissal of the Pentagon Papers case in Los Angeles last week, were in the safe used by Ehrlichman when he was President Nixon's domestic affairs adviser. Ruckelshaus said he found the files Saturday as a result of information pro-

vided by former Assistant Attorney General Robert Mardian.

Ruckelshaus said the wiretaps were aimed at 13 government officials and four newsmen and were operative between May, 1969 and February, 1971. They came after President Nixon and foreign affairs adviser Henry Kissinger had asked the FBI to track down news leaks on the grounds they might imperil negotiations on the Vietnam

war and strategic arms limitation.

The wiretaps occurred before Ellsberg's disclosure of the Pentagon Papers, and his conversations were picked up on a tap that actually was aimed at Morton Halperin, former National Security Council assistant to Kissinger, Ruckelshaus said.

The revelation of that particular tap — and the FBI's subsequent inability to locate the file — led to Judge Matthew

Byrne's dismissal last week of all charges in the Pentagon Papers case. Now that the record has been located, said Ruckelshaus, it appears to contain no information which prosecutors might have used against Ellsberg.

Mr. Felt ☒
Mr. Baker ☒
Mr. Callahan ☒
Mr. Cleveland ☒
Mr. Conrad ☒
Mr. Gebhardt ☒
Mr. Jenkins ☒
Mr. Marshall ☒
Mr. Miller, ES ☒
Mr. Soyars ☒
Mr. Thompson ☒
Mr. Walters ☒
Tele. Room ☒
Mr. Kinley ☒
Mr. Armstrong ☒
Mr. Bowers ☒
Mr. Holloman ☒
Ms. Herwig ☒
Mr. Mintz ☒
Mrs. Neenan ☒

Page, Name of
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NEWARK, NJ

Date: 5/15/73
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Submitting Office: NEWARK, NJ

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The startling revelation of the recovery of the sensitive files came as super-secret national security documents, lifted from White House files

by ousted presidential counsel John W. Dean 3d, were turned over to a federal court to be passed on to Senate investigators of the Watergate bugging scandal.

Acting under a court order he requested, Dean took the mysterious papers — which he contends are more secret than “top secret” and relate to the Watergate scandal — from an Alexandria, Va., bank vault where he hid them two weeks ago.

As a U.S. marshal looked on, Dean and a bank official turned twin keys in the lock on Dean's safe deposit box and Dean pulled out a sealed manila envelope imprinted with “White House” in the upper left-hand corner. He turned the envelope over to waiting court officials.

In yet another sensational development, Senate sources said CIA officials have told a Senate committee that the White House asked the agency

to shoulder the blame for financing of the Watergate bugging conspiracy. The sources said the CIA rejected the proposal.

The testimony emerged at a special meeting of the Senate Armed Services Committee. For the first time, H. R. Haldeman — the resigned presidential assistant — was linked to contacts with the CIA, Sen. Stuart Symington (D-Mo.), said.

The CIA previously disclosed that — on orders from Ehrlichman — it had furnished a wig and other equipment that was used in the burglary of the office of Daniel Ellsberg's psychiatrist.

But yesterday's testimony indicated that White House officials sought CIA help in covering up the Watergate burglary itself, the sources said.

Symington said there “were other matters besides the Ellsberg case in which the White House involved the CIA.”

He declined to discuss them. But from other sources, it was learned that CIA officials apparently were asked to help in covering up campaign contributions funnelled into Mexican bank accounts, and which later wound up in the hands of the convicted Watergate conspirators.

In Los Angeles yesterday, Ellsberg said that the news that missing wiretap files on him had been found in the White House shows that the Pentagon Papers trial, though ended, continues to spur discoveries of government misconduct.

* * *

“I am not surprised,” Ellsberg said of the announcement by Ruckelshaus that the wiretap files had been found.

“I've really believed there was massive wiretapping for a long time.”

But Ellsberg added, “I had hoped our case would go on long enough to draw this and other things out. It barely did . . . This has been a good contribution of our case. I'm glad our case had a sting in its tail.”

Ruckelshaus confirmed also yesterday that FBI correspondence indicated Nixon had personally sought the late J. Edgar Hoover's cooperation with the so called “plumbers” at the White House, a team headed by Ehrlichman assistant Egil (Bud) Krogh which made its own probe of internal security and, in the process, burglarized the office of Ellsberg's psychiatrist. Two other onetime members of that group have been convicted in the Watergate bugging.

Ruckelshaus said the files had been spirited from the FBI, without Hoover's knowledge, by Hoover's assistant, William C. Sullivan.

Moreover, Ruckelshaus said, memos later written by Hoover indicate that former Attorney General John N. Mitchell told him the files had been destroyed. Mitchell has denied making that statement.

Ruckelshaus quoted Mardian as saying Sullivan was the first to recommend the transfer to the White House because he (Sullivan) feared that Hoover "might use the records in some manner against the attorney general or the President."

"There is certainly no proof that Mr. Hoover had any such intention, but the charge had its desired effect," said Ruckelshaus.

* * *

"According to Mr. Mardian, he informed Mr. Mitchell, who in turn informed the White House," Sullivan then handed the files to Mardian, who carried them to the executive mansion, he added.

Mardian was interviewed by FBI agents at his home in Phoenix last Thursday, a day before the files were located.

On Capitol Hill, meanwhile, Watergate conspirator E. Howard Hunt Jr. was questioned yesterday by staff aides for the special Senate committee that opens Watergate hearings this week. He has been granted partial immunity in exchange for his testimony.

A federal court's decision to take possession of the Dean

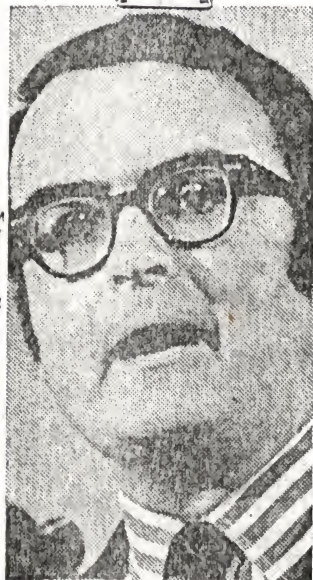
papers was "a blow" to the White House, which had asked the court to order the papers returned sight unseen. Apparently the only person who knows what is in them is Dean himself.

He told the court 10 days ago he took the papers and hid them shortly before President Nixon fired him April 30 because he feared they would be stolen or destroyed if he left them in his White House office.

Granting a motion by Dean, chief U.S. District Judge John J. Sirica agreed to have the mysterious papers transferred to the court for safekeeping, but directed that Watergate prosecutors and the special Senate Watergate committee — who had also put in bids to get the documents — be provided "certified copies."

"Everybody wins," Sirica said in announcing his decision at the end of a 25-minute hearing.

He dispatched Dean and the court clerk to retrieve the papers — described as one 43-page document and eight supplementary items bound in a blue folder — from Dean's safe deposit box.



William Ruckelshaus
'Wrestles' agents



Associated Press Wirephoto
John Dean and lawyer Robert McCandless enter bank
to remove papers requested by federal judge

News Summary and Index

TUESDAY, MAY 15, 1973

The Major Events of the Day

Watergate Investigation

William D. Ruckelshaus, acting director of the Federal Bureau of Investigation, said that records of 17 wiretaps placed on newsmen and Government officials, including one in which Dr. Daniel Ellsberg was overheard, were discovered last week in a White House safe belonging to a former Presidential assistant, John D. Ehrlichman. The documents, compiled over a 21-month period to halt disclosures of secret information to the press, were found Friday. [Page 1, Col. 8.]

Chief Judge John J. Sirica of the United States District Court in Washington took possession of papers purportedly relating to the Watergate case despite a request by the White House that they be returned. [1:6-7.]

Senator Stuart Symington, Democrat of Missouri, said that three high-level White House aides had been deeply involved in trying to enlist the help of the Central Intelligence Agency in domestic undercover activities other than the burglary of the office of Dr. Daniel Ellsberg's former psychiatrist. He identified the three as H. R. Haldeman, John D. Ehrlichman and John W. Dean 3d. [1:5.]

Elliot L. Richardson said that two ranking members of the new White House staff had suggested to him candidates for special prosecutor in the Watergate case. The White House aides were identified as Gen. Alexander M. Haig, the President's chief of staff, and Leonard Garment, counsel to the President. Mr. Richardson said at a Senate hearing on his nomination as Attorney General that he had discarded two names proposed by the White House aides because the men "didn't satisfy the kinds of criteria I'm using." [23:1-4.]

Mr. Felt _____
 Mr. Baker _____
 Mr. Callahan _____
 Mr. Cleveland _____
 Mr. Conrad _____
 Mr. Gebhardt _____
 Mr. Jenkins _____
 Mr. Marshall _____
 Mr. Miller, E. S. _____
 Mr. Soyars _____
 Mr. Thompson _____
 Mr. Walters _____
 Tele. Room _____
 Mr. Kinley _____
 Mr. Armstrong _____
 Mr. Bowers _____
 Mr. Herington _____
 Ms. Herwig _____
 Mr. Mintz _____
 Mrs. Neenan _____

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 People's World _____

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L.A. Probe Calls Ehrlichman

BY JAMES R. POLK

News Staff Writer

Former White House adviser John D. Ehrlichman has been asked to appear before a Los Angeles grand jury probing the break-in to steal psychiatric records of Pentagon Papers defendant Daniel Ellsberg.

Three persons jailed in the Watergate case already have been given immunity from further prosecution to testify before the grand jury next month on their roles in the burglary, Los Angeles officials said.

Ehrlichman, who has not yet responded to the grand jury request, tops a long list of former high-ranking officials sought for testimony on the 1971 raid carried out under the umbrella of the White House.

Gen. Robert E. Cushman Jr., former deputy CIA director who had approved a Central Intelligence Agency disguise for the leader of the project, is also being asked to appear in the West Coast probe. He now is commandant of the Marine Corps.

Other witnesses include Egil (Bud) Krogh Jr., who quit as undersecretary of transportation after it was revealed he gave a go-ahead for the break-in and Charles W. Colson, former White House political aide

THE GRAND JURY is slated to convene June 5 in Los Angeles and the probe is expected to run about four days.

Deputy Dist. Atty. Richard W. Hecht, head of the organized crime division for Los Angeles County prosecutors, has spent the past week in Washington lining up witnesses for the grand jury.

Documents and testimony emerging at the Ellsberg trial showed that Watergate raiders broke into the Beverly Hills office of Dr. Lewis Fielding, the defendant's psychiatrist, on Sept. 3, 1971, to get access to his records.

U.S. District Judge Matt Byrne cited "improper government conduct" in dismissing all charges last week against Ellsberg for publicizing the secret Pentagon Papers history of the American entanglement in the Vietnam war.

Ehrlichman was quoted in an FBI summary at the trial as saying the White House "plumbers" were working on a special Ellsberg project under him, although he did not learn of the break-in until after it happened. He said he told them not to do it again.

HECHT SAID he planned to meet again today with Ehrlichman's attorney, John J. Wilson, in his effort to get the former White House aide to testify.

Mr. Felt _____
Mr. Baker _____
Mr. Callahan _____
Mr. Cleveland _____
Mr. Conrad _____
Mr. Gebhardt _____
Mr. Jenkins _____
Mr. Marshall _____
Mr. Miller, E. S. _____
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Others placed by Hecht on the witness list include Watergate trial defendants E. Howard Hunt Jr., G. Gordon Liddy, Bernard Barker and Eugenio Martinez, plus Felipe de Diego, a Miami colleague listed as having participated in the Los Angeles burglary.

Also, David Young, listed as a leader of the

"plumbers," who resigned from the National Security Council.

Other Watergate developments yesterday included:

- Chief Judge John J. Sirica of U.S. District Court has taken custody of highly secret papers that John W. Dean III took with him after being fired by President Nixon as White House counsel last month.

Sirica yesterday rejected a government motion that the mystery material be returned to the White House. He ruled that both Watergate prosecutors and the Senate committee investigating the case could obtain certified copies of the documents.

The contents of the material, secreted by Dean in a safe deposit box, have not been disclosed. In his original motion asking that Sirica take charge of the material, Dean indicated that they related to Watergate.

However, Dan Thomas of Scripps-Howard News Service today quoted what he said was a source close to the Senate investigation asserting that the Dean documents do not have anything to do with Watergate.

Dean reportedly has been turned down by prosecutors in his request for immunity in return for his testimony before the grand jury investigation of the bugging of Democratic National headquarters and White House cover-up of the affair.

- White House press secretary Ronald E. Ziegler reiterated L. Ziegler reiterated denials that Nixon had any knowledge of the bugging or efforts to cover it up. Ziegler said the White House would stand by remarks the President made in his televised speech April 30, in which Nixon said he had been misled by members of his staff until last March on the magnitude of the case.

Ziegler expressed concern that public hearings, scheduled to be televised when they begin Thursday, might prejudice "due process of law as it relates to grand jury proceedings."

Sens. Sam J. Ervin Jr., D-S.C. and Howard Baker, R-Tenn., ranking members of the Senate Watergate committee, said the panel would take such objections into consideration and said any person accused by a witness will be given equal opportunity to reply.

Baker also said that if the committee waited until the judicial process were completed, it would be years before congressional hearings could begin.

- Ziegler also said that H. R. Haldeman and John D. Ehrlichman — both of whom again appeared before a federal grand jury here again yesterday — still are at the White House, two weeks after their resignations. The two former top presidential aides, he said, are "helping with the transition."

President Nixon, Ziegler predicted, will hold a news conference on the tangled Watergate issue soon, but Ziegler said the timing has to be chosen carefully.

- A Senate subcommittee has spent more than five hours quizzing G. Bradford Cook, chairman of the Securities and Exchange Commission, about inconsistencies in his original testimony on the Vesco case.

Sen. William Proxmire,

D-Wis., closed the hearing to the public yesterday and refused to comment when he emerged shortly before nightfall. Cook wouldn't say anything, either.

A person who attended the hearing said Proxmire ordered "an absolute blanket of secrecy."

Cook was mentioned, but not charged in the indictment last week that accused former Atty. Gen. John N. Mitchell trial. Although Proxmire gave no reason, the hearings may have been closed to avoid causing legal problems in the New York City case.

Stans is accused of taking a \$200,000 campaign contribution in cash from financier Robert L. Vesco.

(Mount Clipping in Space Below)

Editorials

Pentagon Papers Case Falls To Overkill

IT IS DISTRESSFUL that Federal Judge Matt Byrne had to throw out all charges in the Pentagon papers case against Daniel Ellsberg and Anthony Russo. He had no choice.

He declared a mistrial on grounds the government did not come into court with clean hands, that it had tainted its evidence against the two men accused of theft of government papers, espionage and conspiracy.

The judge properly accused the government of misconduct and said that because of it the two defendants could not receive a fair trial. The principal governmental abuses of justice were that a team of undercover men directed from the White House broke into the Los Angeles offices of Ellsberg's psychiatrist and the FBI illegally tapped Ellsberg's telephone.

In simple terms this amounts to government overkill. The CIA had a hand in the Los Angeles burglary and the FBI probably knew about it. The FBI gave Judge Byrne a weak story that it had monitored Ellsberg's phone but said results of this investigation have been misplaced.

* * *

UNDOUBTEDLY there's substance to Washington reports that the late J. Edgar Hoover refused to become involved in dirty tricks suggested by the White House unless he had a written order from

the Justice Department. He received no such order, so the White House took the law into its own hands and engineered the burglary and even had the CIA prepare a psychiatric profile of Ellsberg.

It is amazing that such amateurish tactics were used. Ellsberg admits having visited a psychiatrist five times. The prosecution could have asked him about this. The prosecution perhaps has a legal point that there's nothing in Federal law which grants confidentiality between a psychiatrist and his patient, but that does not justify burglary.

The government accused Ellsberg and Russo of stealing the Pentagon papers, copying them and leaking them to newspapers. Ellsberg said he did it in hopes disclosures from the documents would shorten the Vietnam war.

It should be noted that Judge Byrne earlier offered the defense an option of dismissing some of the charges against Ellsberg and Russo and going to the jury with the remaining charges. The defense rejected this. Judge Byrne also had refused to grant a directed verdict of acquittal. So Judge Byrne believed there was enough substance to the evidence to warrant letting the jury decide the issues.

It's extremely unfortunate that no decision was reached on the

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THE TAMPA TRIBUNE
Tampa, Florida
Page- 12A

Date: 5/14/73
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Author:
Editor: JAMES A. CLENDINEN
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ELLSBERG
Admitted Theft

fuzzy constitutional issues of the case. The government contended theft of the Pentagon papers constituted stealing classified information, thereby depriving the government of such data. Prosecutors also said that stealing Top Secret information was espionage.

Ellsberg admitted the theft but said the principal issue of the whole affair was a test of the First Amendment's guarantees of the rights of free speech.

* * *

SO THESE IMPORTANT constitutional questions must go unanswered just because the government was so determined to throw the book at Ellsberg and Russo with fair and foul means that it trampled on the defendants' rights. Overkill indeed killed the Pentagon papers case.

(Mount Clipping in Space Below)

The Ellsberg case's meaning

Far more than the fate of two individuals was involved in US District Judge W. Matt Byrne's dismissal last Friday of all charges of espionage, theft and conspiracy against Daniel Ellsberg and Anthony Russo Jr.

The decision was, in the first place, a triumph for our system of justice and for due process of law. It was, in the second place, a condemnation of the use of police-state tactics by the Executive branch of our Federal government.

But perhaps most important of all, it offered a needed assurance that the First Amendment, despite attempts by the Federal government to destroy it, is alive and well but still in danger. And the latter point deserves a fuller explanation.

First, as to Judge Byrne's ruling itself, it rightly condemned the government for unlawful procedure and contempt for individual rights while at the same time demonstrating that our Federal judiciary, despite attempts to tamper with it, can hold firm in defense of those rights.

Judge Byrne did not, in his ruling, refer directly or perhaps even indirectly, to the White House offer to him, while the long trial was pending, of the post of FBI director. Perhaps he should have, but he had already ruled on that matter earlier and said it did not influence him. Besides, it is clear enough now that he did not, and that he also had many other reasons for dismissing the charges.

They included the unconscionable burglary of the office of Dr. Ellsberg's psychiatrist, the extensive spying on Ellsberg by a special White House unit, the unlawful use of the Central Intelligence Agency in a purely domestic situation, the Federal Bureau of Investigation's bugging of Ellsberg's phone conversations long before he ever released the Penta-

gon Papers to the press, and the failure of the prosecution even under court order to disclose all the records of these activities.

Judge Byrne's decision, then, was an indictment of the government. And because the case involved the rights of the people as individuals, it was a victory for the people.

But was it also a victory for the

people's right to know? This question, going to the heart of the case, remains to be answered. Ellsberg was indicted for espionage, theft and conspiracy in giving to newspapers a top classified report — The Pentagon Papers — on how the American people became involved, without their knowledge, in the Vietnam War.

The charges were dropped because a secrecy-minded Administration used secret and illegal methods in bringing them to trial. But the issue of what may legally be told to the American people remains. And in this connection some important background is necessary.

The legal proceedings against Daniel Ellsberg did not begin until after the government had tried — and lost its case in the US Supreme Court — to prevent newspapers from publishing the facts in the Pentagon Papers. The 6-to-3 decision on June 30, 1971, held that such "prior restraint" was unconstitutional. It was the first time in our history that newspapers had been punished before, instead of after, publication.

After checking carefully the individual opinions of that decision, we said at the time, and again last January, that enough of the Su-

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—THE BOSTON HERALD
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Editor: Thomas Winship
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preme Court's majority to turn the case around went out of their way to say in obiter dicta that the newspapers might be prosecuted after publication.

It is simply not believable that the Justice Department and the White House to which it was reporting were not aware of this also. And it seems clear that had Ellsberg been convicted, a basis would have been laid for prosecution of the newspapers. Two Federal grand juries were kept in session apparently for that purpose.

And so, while the Ellsberg ruling is an affirmation of justice and a rebuke to the misuse of executive powers, it leaves still unanswered the question raised by publication of documents which government has wrongly classified as secret.

This involves the people's right to know, and until Watergate and all of its ramifications have been exposed to the light of day, that right will still be in jeopardy.

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A Controversial Trial Ends With Questions Unanswered

By Sanford J. Ungar
 Washington Post Staff Writer

LOS ANGELES—"There remain more questions than answers," said U.S. District Court Judge W. Matt Byrne Jr. Friday, as he dismissed all charges against Pentagon Papers defendants Daniel Ellsberg and Anthony J. Russo Jr.

The judge was talking about the incomplete investigation into how a burglary squad reporting to the White House and government wiretappers had violated Ellsberg's constitutional rights.

But his expression of frustration could have been pronounced with equal force about the entire Pentagon Papers affair and the fundamental legal issues it raised. Although that affair has now come to a tentative conclusion after two years of complex litigation, many problems are unresolved.

The system of government secrecy that produced the Pentagon Papers and kept them from the public has been attacked and mocked in the courtroom, but remains intact.

Freedom of the press has not been advanced one iota by the dismissal of charges against Ellsberg and Russo, and it may still be bruised from the Justice Department's temporary success in stopping newspaper publication of the documents two years ago.

No balance has been struck, or happy medium found, to guide future relationships between government and the press on the issue of what "national security" information can legitimately be published and what can legitimately be kept classified.

No Victory

The federal government's powers to investigate citizens for alleged criminal conduct have been shown to be virtually without legal safeguards—with the Central Intelligence Agency prepared to ignore statutory restrictions and engage in domestic operations, and the Federal Bureau of Investigation unable or unwilling to produce records of its own electronic surveillance.

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There has been no pronouncement on whether "information" can be "stolen" from the government, nor has the legal definition of "espionage" been moved in one direction or the other.

In retrospect, it all appears to be a peculiar piece of recent American history—more political than legal—a rather embarrassing defeat for the Nixon administration, but not a clear-cut victory for anyone.

It began exactly 23 months ago today, when The New York Times published articles based on the then-secret history of U.S. involvement in Southeast Asia and infuriated the administration, which was just then working on President Nixon's overtures to China.

The Justice Department, at that time under the stewardship of Attorney General John N. Mitchell (himself under criminal indictment now), moved for injunctions against The Times and, in their turn, The Washington Post, The Boston Globe and the St. Louis Post-Dispatch.

Although the Supreme Court ruled on June 30, 1971, that the federal government had not met its burden in trying to justify a "prior restraint" on publication, some of the justices' opinions virtually invited the administration to take the route of criminal charges.

In the midst of the fight with the newspapers, Daniel Ellsberg, a former government policy researcher and a convert on the Vietnam war, was revealed to be the source of the leaked documents.

He was indicted for the first time even before the high court ruled on the civil suits.

In the course of trying to build its case before a federal grand jury here, the government sought the testimony of Russo, a long-time friend of Ellsberg while

they both worked at the Rand Corp. in Santa Monica, who had helped him Xerox the Pentagon Papers in 1969.

Russo resisted, was held in contempt-of-court and served more than six weeks in jail for his refusal to testify—the only time, it would turn out, that either defendant ever served in jail in connection with the Pentagon Papers affair.

When he continued to refuse to appear at a secret grand jury proceeding after being released from jail, Russo was added to a superseding indictment against Ellsberg in December, 1971.

That indictment included 14 counts charging espionage and theft of government property, as well as a unique conspiracy charge that accused Ellsberg and Russo of "defrauding" the United States out of its "lawful governmental function of controlling the dissemination of classified memoranda and communications."

Government Tap

The case almost went to trial last July but on the eve of opening statements and after a jury had been sworn into service, it was revealed that a defense lawyer or consultant had been overheard in a "foreign intelligence" wiretap by the government on someone else.

Byrne declared the wiretap irrelevant, but the defense persuaded Supreme Court Justice William O. Douglas to suspend the trial while the issue was litigated.

The Supreme Court ultimately refused to hear the wiretap appeal, but several months had passed before that decision, and the Ninth U.S. Circuit Court of Appeals told Byrne that it would be "foolish" to proceed before a jury that might have been prejudiced

by publicity during four months outside the courtroom.

A mistrial was declared in December, after the defendants waived their Fifth Amendment rights against "double jeopardy," and a new jury selected the next month.

When the trial finally began in mid-January, the prosecution and defense made it clear that they agreed only about a few "mechanical facts."

For the government, it was a simple, narrow case of theft and misuse of "guarded" documents. But the defense told the jurors they had a unique opportunity to learn about and pass judgment on deception of the American people by the executive branch of government.

Several of the figures originally scheduled to testify for the prosecution had drifted away to other tasks during the long delay, and so the government had to rely largely on two Army generals to link the documents at issue with the "national defense," as required for conviction under the Espionage Act.

The idea was that if the Pentagon Papers had fallen into the hands of a hypothetical "foreign analyst" working in intelligence, they would have caused "injury" to the United States and "advantage" to the foreign power.

To contradict that view, the defense presented one witness after another—former government officials—to satisfy Ellsberg's inclination toward the powerful, and more "radical" types who fit into Russo's view of the case as a "political trial."

Thus, the jurors heard not only from those who had helped Presidents Kennedy and Johnson plan the American effort in Vietnam, but also from antiwar activists who had traveled to Hanoi in the midst of it.

On the conspiracy charge, the prosecution merely demonstrated that Ellsberg and Russo had been seen together in the period of time before they photocopied the documents.

Ellsberg insisted in his own defense, however, that he made the decision on the spur of the moment and called Russo only to see whether a Hollywood adver-

tising person, then Russo's girlfriend, could make her Xerox machine available.

To the last, the defense sought to persuade judge Byrne to knock out the "conspiracy to defraud" part of the indictment, claiming it was an unconstitutional effort at "information control."

The theft charges were the toughest ones for the defense to deal with.

Although the prosecution never established that the copy of the Pentagon Papers removed from Rand by Ellsberg was worth over \$100—as required for a felony conviction—there was simply no question that the documents had been taken out and duplicated.

Accepting the facts, the defense came up with a complicated theory that the Papers were not "government property" at all, but rather the "private papers" of three former Defense Department officials.

What is more, Ellsberg and Russo insisted that Rand's security regulations did not have the force of law.

Apparently, that approach worked on the jury. One juror, Cora C. Neal, summarized her view of the theft charge this way:

"They stole company property, not government property. And yet Ellsberg didn't steal it, he was authorized to have it. He lost his job . . . that was enough punishment."

But the complicated questions in the case really went well beyond Ellsberg and Russo and the Pentagon Papers. They were never answered in part because government misconduct deprived the judge of his opportunity to instruct the jury on the meaning of "national defense" and other key terms.

There was never any decision on whether the federal government had properly used the law or abused it in the attempt to punish Ellsberg and Russo.

For their own part, the two defendants feel they were vindicated, and that other potential "leakers" will be encouraged to follow what they did.

But some observers suggest that two years in court at a cost of almost a million dollars, even without a conviction, may have a substantial deterrent effect.

The Trial That Failed

Given the shocking revelations of government misconduct, there was no other choice for Judge Matt Byrne. Only by dismissing all charges against Daniel Ellsberg and Anthony Russo could he dispel the ever-thickening corruptive cloud that hung over the Pentagon Papers trial in Los Angeles, and shield the integrity of the judicial process. His rebuke to the sinister influences that played upon this case is the only heartening aspect of a dismal affair that became infected, beyond cure, by the Watergate blight. At least we all are reassured by his action that the courts still stand strong against secret and illegal excesses of government.

Of course the probability of this outcome had been obvious for some time. Early this month we commented that the trial was seriously compromised by two stunning disclosures: that White House operatives had burglarized the office of Ellsberg's psychiatrist, seeking his records, and that just last month the White House approached the trial judge, to discuss the possibility of his appointment as FBI director. But that was before the report of FBI wiretap eavesdropping on Ellsberg, in 1969 and 1970, and the government's humiliating admission that all records of this spying had disappeared. And along came that ultimate shocker, about the CIA having equipped the burglars of the psychiatrist's office, who happen to be two of the convicted Watergate espionage conspirators. Against all this, the Justice Department could make no credible case for the legitimacy of its prosecution.

So one of the most historic trials in American history had to be aborted, after costing the government perhaps millions of dollars, and the defendants hundreds of thousands. Nor can the latter claim acquittal, on charges of stealing and disseminating that secret Pentagon report on the Vietnam war. Their victory, from the mistrial and dismissal, is that they will not be tried again on those charges, and that the decision, such as it was, went against the government. But unfortunately it also left vital questions hanging in air. An important unresolved matter is the extent of government power to prevent the release of classified information.

In any case, the tremors from Judge Byrne's courtroom will be felt a long while, especially in a White House that's being shaken unceasingly by the Watergate scandal and charges of election finance corruption. And there may be more to come, if California authorities really are intent on prosecuting those who engineered the psychiatric office burglary. Only by an intense effort to uncover every last fact about all its plagues can the Nixon administration begin to compensate for the losses it has suffered. Its showing in the Los Angeles court can only depreciate, once again, the people's confidence in government.

And explaining to them how a trial of such magnitude could be disrupted by devious government actions will, to say the least, not be easy.

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Ellsberg decision defeat for government secrecy

By Thomas Oliphant
Globe Washington Bureau

WASHINGTON — A lot more went out of Federal Judge Matt Byrne's Los Angeles courtroom Friday afternoon than two free men — Daniel Ellsberg and Anthony Russo.

With them went a carefully, if controversially, constructed case built by the Nixon Administration against them which, had it somehow succeeded, would have given the government powers to control information it has never before had or claimed.

Now that case — nearly two years old — is down the drain.

For the last two weeks, the final stages of the trial of Ellsberg and Russo have been so linked with the Watergate affair that many people may have forgotten what it was really about.

In a limited sense, the case was about the Pentagon Papers, the once top secret, multivolume study of more than two decades of American involvement in Indochina.

Ellsberg and Russo have consistently admitted that in late 1969 with the help of others they copied one set of the documents near Los Angeles. Ellsberg has also admitted that he gave a copy to Senate Foreign Relations Committee Chairman J. William Fulbright in 1969 and other copies to other congressmen and to the press in 1971.

The trial, however, actually posed broader, far more profound

questions than the guilt or innocence of these two defendants. Here are some of them:

— Can information contained in classified materials be said to belong to the government, as opposed to the public; and can it be considered theft to disclose such information by breaking administrative regulations that do not have the force of law?

— Is the present system for the classification of documents, based only on a presidential executive order, a lawful governmental function even though Congress has not only not specifically authorized it but actually refused to do so several times this century.

"Can it be called 'espionage' if someone authorized to possess a classified document gives it to someone who is not, even if he does so without the intent to injure the United States or aid a foreign nation?"

The crux of the Nixon Administration's case against Ellsberg and Russo was based on affirmative responses to these questions, and each of those re-

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— THE BOSTON HERALD
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1 — THE BOSTON GLOBE
BOSTON, MASS.

Date: 5/13/73
Edition: Sunday
Author: Thomas Oliphant
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Submitting Office: BOSTON

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ponses was unprecedented in American history.

Nor were these claims so technical and bureaucratic in nature to be of only minor significance to the public.

For had the Administration prevailed in the Pentagon Papers trial, the flow of information to the people through the press and through Congress would probably have been greatly curtailed.

It is one thing for an official to risk losing his job by passing along information he feels should not be suppressed. But it is altogether something else for that official to believe he will face criminal prosecution for his act.

At the Pentagon Papers trial, the Administration wove its novel assertions into what was basically a three-part indictment.

In the first part, Ellsberg and Russo were charged with conspiring to defraud the government by frustrating this allegedly "lawful function" of controlling the dissemination of classified information.

They were also charged with several violations of the laws against theft, for allegedly stealing not only the pieces of paper involved but also their "word content," which the Administration was implicitly claiming as its own.

Finally, both were charged with violating a section of the basic espionage statute that had never before been used. In the past, other espionage prosecutions had been based on sections of the law requiring proof that a person acted with the in-

tent to hurt this country or help another.

However, in the Pentagon Papers case, the Nixon Administration used a section of the law, which the defense argued is unconstitutional, that makes it a crime to give information "relating to the national defense" to someone not "authorized" to receive it.

Most of the 13 counts in the indictment involved Ellsberg, but Russo's position was anything but minor.

As the alleged "receiver" of the material Ellsberg provided, Russo in this case was simply a guy helping his friend. However, had he been, for example, a newspaperman, the same charges — receiving stolen property and "national defense" information and maybe conspiracy

as well — could just as easily have applied.

Thus, had Russo been convicted, it would have become just as dangerous to receive as to give in the traditional system in which information is "leaked" to the public.

Judge Byrne's dramatic ruling on Friday which both declared a mistrial in the case and also dismissed the indictment to preclude future prosecution before another jury, technically left all these crucial constitutional questions unresolved.

However, as a practical matter, the Administration appears to have lost its attempt to broaden greatly the government's information-control powers.

In the first place, it is difficult to imagine that the Justice Dept., after two years of work and more

than \$2 million would be willing to go through it again for some other leak of classified documents.

It is especially difficult to imagine this happening in view of the fact that the initial attempts to find out what the jury in the Pentagon Papers might have concluded have disclosed that more than half the jurors would have voted for acquittal.

It is even more difficult to imagine another trial of some future Ellsberg in the current political atmosphere. The still-spreading Watergate scandal has drained this Administration's claims of executive supremacy of much of their legitimacy.

Moreover, the Administration itself is dubious of the legal claims it was making in the Pentagon Papers prosecution.

Earlier this year, as part of a proposed overhaul of the basic Federal criminal code, the Administration recommended that Congress enact what would in effect be an Official Secrets Act.

Under it, the kinds of things Ellsberg and Russo did would have been specifically termed crimes; the classification system would have received formal legislative sanction; and the government's proprietary right to information would have been explicitly recognized.

Such proposals have always been defeated in the past, and there was never any reason to believe Congress would be more receptive this year. Now that the Watergate scandal has exploded, the proposals seem doomed to certain defeat.

Thus, having failed in the Pentagon Papers case and almost certain to fail in its legislative proposals, the Administration's efforts to put the force of criminal law behind the classification system seem to be going nowhere.

Meanwhile, in Los Angeles, the Pentagon Papers case may be over, but many important questions remain to be answered.

For example:

—What else did that group of White House "plumbers" do to Ellsberg in 1971?

On what other occasions were the telephones of Ellsberg and others involved in the case bugged, who authorized these wiretaps, what was done with the records of them, and if they were stolen or destroyed who did it?

Ellsberg Case: Defendants Freed, Government Convicted

LOS ANGELES—One of the most unusual prosecutions ever brought by the Federal government, the Pentagon Papers case against Daniel Ellsberg and Anthony J. Russo Jr., ended last week in an unusual way—with the defendants freed of all charges, never to face them again, and the Government of the United States convicted of recklessly destroying their right to a fair trial.

The end came Friday afternoon. United States District Court Judge William Matthew Byrne Jr. cited "an extraordinary series of disclosures regarding the conduct of several governmental agencies . . . an unprecedented series of actions with respect to these defendants. . . ."

"The bizarre events have incurably infected the prosecution of this case . . . the only remedy available that would assure due process and a fair administration of justice is that this trial be terminated and the defendants' motion for dismissal be granted and the jury discharged."

For two weeks, those bizarre revelations, one more shocking than the next, had made the dismissal predictable:

- The White House had engineered a burglary at the office of Mr. Ellsberg's psychiatrist in an effort to obtain whatever information was in Mr. Ellsberg's file.

- In charge of the operation were E. Howard Hunt, Jr. and J. Gordon Liddy, the two men who had been convicted as leaders of the Watergate ring.

- High officials of the Central Intelligence Agency had supplied the burglars with disguises, false identification cards and a camera.

- Even before the Pentagon Papers were copied and made public by the

defendants—acts they proudly admitted—the F.B.I. had intercepted phone conversations of Ellsberg's. The records of the wiretap, allegedly authorized for national security, had disappeared from the F.B.I. and the Justice Department.

Perhaps the strangest disclosure of all involved Judge Byrne himself. In April, with the long trial approaching a climax, John D. Ehrlichman and President Nixon had discussed with him the possibility that he might become the next director of the F.B.I. The defense called it attempted bribery; the judge, without reacting to that characterization, declared that his impartiality had not been compromised and let the trial go on.

But not for long. On Friday, he said that the way the Government has acted in the case has "offended a sense of justice."

The judge's ruling was an obituary for an historic episode that began with the publication of the Pentagon Papers—the Defense Department's own study of American involvement in the Vietnam War—in the New York Times beginning June 13, 1971. The Government immediately brought suit to suppress further articles based on the study—an unprecedented action because it meant censorship prior to publication. The effort failed.

The indictment of Ellsberg and Russo on charges of espionage was also unusual, since there was no allegation, in court or out, that the defendants were acting in cooperation with a foreign government. They said they wanted only to help end the war by informing Congress and the American people of their own Government's actions.

The government tried to show that

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the defendants had stolen government property—they were guilty of a theft that became an espionage charge because what they stole was classified "top secret" and affected national security. The defense response was that what was in the Pentagon Papers should never have been stamped secret to begin with.

The 10 women and two men of weeks, never got a chance to decide any of the 13 counts—six for espionage, six for theft and one for conspiracy—or the broader constitutional issues related to the First Amendment, the theft of information, or an indictment based on the violation of an executive order.

When Mr. Ellsberg surrendered himself to the Government, he declared: I am prepared for all consequences." In the end, it was the Government that was left to consider the consequences of its own actions.

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7 of 12 on Ellsberg's Jury Leaned Toward Acquittal

Not 'Enough Evidence,' One Member Says

By The Associated Press

LOS ANGELES, May 12—Seven of the 12 jurors in the Pentagon papers trial say that they favored or were leaning toward acquittal of Dr. Daniel Ellsberg and Anthony J. Russo Jr. on charges of espionage, theft and conspiracy.

United States District Judge William Matthew Byrne Jr., who presided over the trial, ordered the charges dismissed yesterday because of Government misconduct.

The Associated Press polled the jurors after Judge Byrne's ruling.

Wilfred R. Baltodano, an Irvine oil worker and former marine, said, "As far as I'm concerned, there wasn't enough evidence to sustain a guilty verdict, whether a crime had been committed or not."

'Couldn't Decide'

"I think it would have come in favor of the defense eventually," Phyllis Ortman, 27-year-old housewife, said.

"I didn't really feel the prosecution had proved the case," said Joan Duhigg. "My personal feelings were toward the defense."

"The trial didn't finish, so I couldn't decide," said Darlene Arneaud. "I was leaning one way, but I don't think I should comment on what I felt." However, she was the only juror to indicate that she might have sided against the defendants. "One thing — Mr. Ellsberg and

admit he copied the papers," she said. "I felt that was wrong."

"I hadn't made any decision, because the judge would always tell us what to go by," said Lupe Vasquez. "But in my heart I felt it would go like it turned out. I felt right along it would be dismissed. I had that feeling."

Dulcy Embree said, "Because I didn't get a chance to go through all the material, I couldn't say how I would have voted." But she added, "I had been leaning toward the defense."

"I hadn't made up my mind one way or the other," said Margaret Kaschube. "I can't say I was leaning one way or the other."

Another juror, Annie Saunders, asked how she thought the verdict would have gone, said, "I couldn't really say." She refused to comment further.

But Cora Neal said definitely, "I made up my mind. I'm pretty sure I would have said not guilty."

And Jean Boutelier said that she had not made up her mind about the theft and conspiracy charges but had about the espionage count. "I couldn't see the espionage," she said. "From what I saw of the documents and what not, it appeared to be more history than something about to happen that could have hurt the country."

Most of the jurors said that they were disappointed because

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2 Defendants Say Trial Told 'Painful Truth'

By MARTIN ARNOLD

Special to The New York Times

LOS ANGELES, May 12—Dr. Daniel Ellsberg and Anthony J. Russo Jr., tired but jubilant, said today that the 89 days of their trial had served the purpose of "telling the truth, the very painful truth," to the American people.

Yesterday, United States District Court Judge William Matthew Byrne Jr. dismissed the charges of espionage, theft and conspiracy against the two men, citing "improper Government conduct, shielded so long from public view" that it offended "a sense of justice."

And although he did not dismiss the case with prejudice against the Government, the nature of his ruling was such that he assured that never again could the two men be tried on charges involving the Pentagon papers.

A Joyous Party

So today Dr. Ellsberg and Mr. Russo were speaking about the case and their plans at a news conference after celebrating their victory at a long and joyous party last night.

"Tony and I got a dismissal," Dr. Ellsberg said, "and after last night an acquittal by the jury also."

He was referring to the fact that a majority of the jurors polled said that they would have voted to acquit the two men if they had got the case.

"The war is not over, but in a long struggle the country has something to celebrate," he said. "The fact is the Government was convicted of burglary

and espionage."

Mr. Russo said that he felt, on awakening this morning, "a great sense of humility."

Being the No. 2 defendant, reading and hearing constantly of "the Ellsberg trial" was difficult for him, it was known, since he, too, was facing the possibility of many years in prison. But gone today were all the tensions that this fact had produced over the many months of the trial.

He was, he said, sad that the trial's conclusion was "not as clear-cut as we wanted to see," but he added, "We were unable to let the trial go to the jury. We were forced to take every action we could for a dismissal."

Still, he said, "I'm really satisfied."

"I think it was a victory, not just for Dan and me, but for millions of people," he added.

He said that what he and Dr. Ellsberg had done was "a very radical act, and everybody should question it. But the jury was the only legitimate party in that courtroom."

Mr. Russo told those present that nearly one year ago "in the bowels of that courthouse I was beaten up by guards."

"All of us who fought this war, opposed this war, still have a job to do," he said.

For him, the future holds, at first, the writing of a book. This will relieve his sense of "frustration" at having to sit so quietly for so long in court," he said.

Dr. Ellsberg said that after extensive traveling with his wife he hoped to return to a life of writing and research.

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the jury had not got the opportunity to decide the case.

"I'm pleased that the defendants were freed, but I thought there were some issues in the case that were left unresolved," said Mrs. Ortman. "I think I was beginning to feel as the trial went on that the American people have the right to know, and that was Ellsberg's issue. That's one of the things that I'm very sorry that wasn't resolved by the dismissal."

Lawyers, Judge Praised

The jurors said that they had tried to avoid reading and hearing about the case outside the courtroom but found that virtually impossible to do, especially toward the end when Watergate and White House links emerged, and the case was constantly in the news.

Most of the jurors indicated that they felt the lawyers and United States District Court Judge William Matthew Byrne Jr. had done a good job. Mrs. Arneaud said of the judge, "I have a great respect for that man."

But several said that they were surprised that the prosecution had not presented a longer case.

"I was surprised the prosecution had so few witnesses," Mrs. Duhigg said. "And when they finished, I really felt they hadn't proved the case."

~~We were rather surprised~~ when it [the Government case] was over," said Mrs. Ortman. "We thought they would have more."



United Press International

Mrs. Phyllis E. Ortman,
also on the jury, at-
tended the party.

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Special to The New York Times

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Anthony J. Russo Jr., former co-defendant in the Pentagon papers trial, gets a pat on the cheek from Mrs. Cora C. Neal, one of the jury members, during a party in

Beverly Hills, Calif., after the charges were dismissed on Friday. Observing the fun are Dr. Daniel Ellsberg, who was the other ex-defendant, and his wife, Patricia.

United Press International

What It Costs To Defend Yourself Against the Government

by Lloyd Shearer

LOS ANGELES, CALIF.

20,000 contributors

Why should any man spend almost two years of his life and much of his own wealth raising \$900,000 for the Pentagon Papers Legal Defense Fund?

That's approximately how much it cost to defend Daniel Ellsberg and Anthony Russo. And the man who raised that amount is Stanley K. Sheinbaum, 52, a tall, bearded former Michigan State University economics professor.

Sheinbaum, of Santa Barbara, Calif., married for the last nine years to Betty Sperling, a daughter of movie mogul Harry Warner, says, "I became involved with the defense team, because it seemed to me that the case represented some major principles: Do the American people have the right of access to studies they pay for? Do they have the right to see papers which have been improperly and arbitrarily classified? Do they have the right to know as much truth or as little truth as their government chooses about a war into which they poured their blood and treasure? Are men who make the truth available to the American public guilty of espionage? If a man copies papers which have been made available to him so that he can give them to a member of Congress, does that constitute theft?

"These were some of the first-time questions which intrigued me, so I became involved in seeing that Ellsberg and Russo were granted a fair trial. A fair trial costs money in this country, and more than 20,000 individuals contributed to the Pentagon Papers Legal Defense Fund. I raised money through mass mailings and got about 40 percent that way. The remainder came through cocktail parties, dinners, lectures, a Barbara Streisand entertainment dinner, and from the defendants themselves. Ellsberg and Russo contributed about \$75,000 to the fund by making speeches and writing articles. That \$75,000 covered about one month's expenses. And remember, the indictment against the defendants was issued on July 1, 1971. That's a long time ago.

Wealthy opponent

"People just don't seem to realize how much it costs to defend themselves when the government moves against them. The government, of course, has limitless funds and almost limitless personnel to employ. I would guess the Pentagon Papers trial cost the government close to \$3 million. It's really impossible to tell. Maybe more, maybe less.

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1 "Who knows how many FBI men they used on the case and for how long, or how many clerks, or how many transcripts they ordered? One day's transcript costs about \$180. A good lawyer costs about \$50 an hour.

"All five attorneys defending Ellsberg and Russo contributed much of their own time for nothing. Right at this moment we owe Leonard Boudin, one of Ellsberg's lawyers, about \$60,000. We're still about \$75,000 in the hole.

"Tony Russo twice appealed to the court to grant him pauper status so he could get some government financial assistance in paying for transcripts and witness expenses, but the judge ruled against him.

Liberals hold back

"For a while I thought we might get some wealthy liberals to come across with \$50,000 at a crack, but we had no such luck, except with Ellsberg's wife; she contributed about \$100,000 by borrowing on her trust funds." [Mrs. Ellsberg is the daughter of Louis Marx, founder of the Marx Toy Company who refused to contribute a dollar to the defense. He is an avowed conservative and close friend of Pentagon officials and generals.]

Sheinbaum, who is an expert on international finance and engages in long-term arbitrage, plans to spend the next three months with his wife on a small island, Gilo, off the west coast of Italy, on which they own a home.

"After two years of running my fanny off," he says, "I believe I deserve it. Working for a cause and a principle carries its own rewards, but it sure is tiring as hell. If I had to do this all over again I'd probably commit suicide."



Sheinbaum with his wife Betty. He ruefully points to the unlimited money at the government's disposal while the defense fund is "still about \$75,000 in the hole."



Defendant Daniel Ellsberg and wife with Stanley K. Shainbaum, ex-economics professor who has raised

\$900,000 for Pentagon Papers Legal Defense Fund. "I got involved," he says, over "major principles."

Ellsberg Case

Mr. Felt _____
 Mr. Baker _____
 Mr. Callahan _____
 Mr. Cleveland _____
 Mr. Conrad _____
 Mr. Gebhardt _____
 Mr. Jenkins _____
 Mr. Marshall _____
 Mr. Miller, E.S. ✓
 Mr. Soyars _____

Merged the Misdeeds

BY OSWALD JOHNSTON

Star-News Staff Writer

... feel that whether a person steals Larry O'Brien's secret papers or steals the Pentagon papers, he should be punished. . . . If you are going to purloin documents, why is there a double standard about purloining re-election documents and purloining the Pentagon papers?—Vice President Agnew, Oct. 29, 1972.

Can a responsible press hold that in Ellsberg's betrayal of his oath of secrecy, and his theft of secret government documents, his political ends justified the means, while in the Watergate affair the same ends were totally unjustified?—Claire Booth Luce, May 3, 1973.

The administration claim that the Watergate case and the Pentagon papers case were somehow two sides of the same coin was utterly demolished in the Los Angeles federal court Friday.

Expressly citing government misconduct in the case that in at least one instance extended to criminal behavior, Judge W. Matthew Byrne Jr. dismissed all charges against Daniel Ellsberg and Anthony Russo for stealing and copying the Pentagon's study of the Vietnam war.

In consequence, as a result of its own misdeeds, the administration lost its chance to assert through a successful prosecution of Ellsberg its claim that dissemination of material deemed "classified" is on its face a crime.

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 Mr. Conmy _____
 Mr. Mintz _____
 Mr. Eardley _____
 Mrs. Hogan _____

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"THERE ARE no rules now," one dismayed member of the defense establishment brumbled last week, as the Los Angeles trial, after a series of revelations of government misconduct in the case, approached what appeared then to be an inevitable dismissal of all charges the government had brought.

"Anybody can leak anything he wants," the source, a former Pentagon official, said. "And the government has nobody to blame but itself."

The trial record of the last few weeks, however, has revealed far more than mere ineptitude on the part of the government in securing its case against Ellsberg and Russo.

Through a series of chance coincidences, it became revealed that some of the same motives, techniques and activities were enlisted in behalf of the government in the Pentagon papers case during 1971 as in the Watergate case during 1972—and by the same team of E. Howard Hunt and G. Gordon Liddy.

On April 27, barely a week before Mrs. Luce told a gathering of newspaper editors in Washington that the Pentagon papers leak to the press was a crime equal in infamy to the Watergate break-in, Byrne revealed in Los Angeles that the office of Ellsberg's psychiatrist had been burglarized by Hunt and Liddy.

ON MAY 4, the day after Mrs. Luce spoke, Byrne released sworn testimony by Hunt to the Watergate grand jury revealing that the burglary of the psychiatrist was carried out on what he conceived to be orders from White House domestic affairs chief John D. Ehrlichman and one of his aides, Egil Krogh Jr.

Hunt's testimony also revealed that the Central Intelligence Agency, in an action on the borderline of a federal law forbidding domestic operations by the CIA, supplied Hunt with undercover equipment and did so at the request of Ehrlichman.

In sum, what was revealed in the closing days of the Pentagon papers trial was that the government, during 1971, had already assembled a team capable of criminal behavior to advance administration policies.

Emerging as they did as the Watergate case bid fair to engulf the whole Nixon administration in its widening scandal, these revelations had the effect in the public mind of superimposing one set of misdeeds upon another, so that both cases became inextricably intertwined, rather than balanced against each other as administration apologists once hoped they would.

The possibility exists that the political espionage of Watergate would never have been authorized in behalf of President Nixon's re-election efforts had the apparatus for setting up such an operation not been already assembled at the time of the Pentagon papers, a year earlier.

Despite some recent sketchy circumstantial evidence to the effect that the FBI knew ahead of time that Ellsberg had secreted a copy of the Pentagon study of the Vietnam war the administration was stunned when the New York Times began publishing the study June 13, 1971.

A GOVERNMENT-wide investigation was launched at once, with FBI agents fanning out into the Pentagon and State Department in search of leaks.

But Ellsberg, first named publicly as the source of the leak within three days of the first installment of the Pentagon papers' publication, surrendered to federal authorities in Boston June 28. He admitted freely that he passed the papers to the Times and other papers and declared, "I am prepared for all consequences." He was indicted the same day.

Nevertheless, even though the case was solved, Nixon's White House staff assembled a task force, ostensibly to "study declassification procedures," which apparently concentrated most of its energies on investigating Ellsberg.

Ehrlichman was put at the head of the team, with Krogh his chief deputy. On July 1 a member of Henry A. Kissinger's staff, David Young, joined the team on extended loan from the National Security Council.

Within a week of its formation, the team was ready to function, and Ehrlichman sought undercover help. In early July, E. Howard Hunt, a former CIA agent, joined the antileak team, reportedly at the suggestion of White House special counsel Charles W. Colson.

In late July, Liddy, who had just been fired from a job with the Treasury department, was hired on by Hunt with the assent of Krogh. Hunt was paid a consultant's fee of \$100 a day through Colson's office, but Liddy received a direct White House salary.

On July 7 or 8, according to CIA records, Ehrlichman telephoned Gen. Robert E. Cushman, then deputy director of the agency, to advise him that Hunt was a White House security consultant and, in

Cushman's words, "that Hunt would come to see me and request assistance which Mr. Ehrlichman requested that I give."

AS THE record later showed, the team thus assembled, with the CIA assistance requested of Cushman, planned and carried out the burglary of Ellsberg's psychiatrist on Sept. 3. Actually doing the breaking and entering were Cuban emigres recruited by Hunt for that job. They were recruited again nine months later for the break-in at Democratic headquarters in the Watergate complex.

Judge Byrne summed up the team's activities during 1971 this way:

"After the original indictment, at a time when the government's rights to investigate the defendants are narrowly circumscribed, White House officials established a special unit to investigate one of the defendants in this case.

"The special unit apparently operated with the approval of the FBI, the agency officially charged with the investigation of this case. . . .

"The special unit came to Los Angeles and surveyed the vicinity of the offices of the psychiatrist of one of the defendants. After reporting to a White House assistant and apparently receiving specific authorization, the special unit then planned and executed the break-in of the psychiatrist's office in search of the records of one of the defendants.

"The Central Intelligence Agency, presumably acting beyond its statutory authority, and at the request of the White House, had provided disguises, photographic equipment and other paraphernalia for covert operations."

Byrne added: "The defendants and the court do not know the other activities in which the special unit may have been engaged and what has happened as a result of these endeavors."

Most Ellsberg Jurors In Favor of Acquittal

By Sanford J. Ungar and Leroy F. Aarons

Washington-Post Staff Writers

LOS ANGELES, May 11—If the Pentagon Papers case had ever gone to the jury, Daniel Ellsberg and Anthony J. Russo Jr. probably would have been acquitted of federal charges of conspiracy, espionage and theft of government property.

But that verdict might have been a long time in coming, because there was at least one holdout in the jury box and because many of the jurors—to the surprise of most participants in the trial—intended to read large sections of the documents before reaching a final decision.

Those are the tentative conclusions based upon interviews by The Washington Post with several of the ten women and two men jurors who heard evidence in the case since January.

U.S. District Court Judge W. Matt Byrne Jr., citing governmental misconduct that had hopelessly violated the rights of the defendants, declared a mistrial Friday and dismissed all charges against Ellsberg and Russo.

It is considered highly unlikely that they will ever be tried again on those charges, because Byrne terminated the case in a way that makes it virtually impossible for the Justice Department to circumvent the Fifth Amendment ban on "double jeopardy."

For most of the jurors, who qualified for service largely on the basis of their prior lack of knowledge about the case, the four-month-long trial was an eye-opening experience.

Some say that it changed their lives.

"I was a typical apathetic American" before the trial, explains Joan B. Duhigg, a housewife from Huntington Beach. "But this has awakened me to what is going on. I'm going to read... and I might even march" against government policies in the future.

Cora C. Neal, known as "Corky" to her fellow jurors as the diminutive livewire of the jury room, feels the same way.

Between her job at the General Telephone Co. in Santa Monica and night courses at a local community college, she said today, she rarely had time to read the newspapers or books on current affairs. "But I'll have to find time now. I've got a long reading list. Nearly every witness in the case wrote a book."

Mrs. Neal, a widow, said it was "rather surprising" to learn, from testimony about the Pentagon Papers, that the American government often did one thing in Southeast Asia while telling the public it was doing another.

She and Mrs. Duhigg were among the seven jurors and one alternate who attended the Ellsberg-Russo defense's "victory party" in Beverly Hills Friday night.

They stayed until nearly three o'clock in the morning, talking for hours with the defendants, their wives, lawyers and aides. "It was so nice to meet everyone that I feel like I've known for such a long time," Mrs. Duhigg said today.

Most of the jurors at the party arrived with an anxious feeling of hesitancy —

each apparently having the same concern expressed by Margaret C. Kaschube: "Am I the only one?"—and brought two or three friends and relatives along for moral support.

It was an opportunity for them, above all, to ask questions and to fill in some of the gaps in the evidence.

Jean E. Boutelier, for one, took a reporter aside and quizzed him about how his newspaper had made the decision in 1971 to publish articles based on the Pentagon Papers. She said she felt "better" to learn that editors had weighed the relationship of the documents to the "national defense," a consideration more recently thrust upon the jury.

Mrs. Boutelier, a housewife from Cypress in conservative Orange County, brought her son Kim along, and he joked that he had originally felt his mother "was too much of a redneck to ever get selected for that jury."

But she surprised him as the trial went on and she began to lean toward the defense. "I just couldn't see convicting those men of es-

spionage," Mrs. Boutelier told a reporter.

One juror who did not attend the party was Darlene Y. Arneaud, a divorced mother of two who is also caring for five nephews and recently removed herself voluntarily from the welfare rolls.

She acknowledged in a telephone interview today that she had distinctly favored the prosecution case.

Ellsberg "admitted copying the Pentagon Papers,"

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Mrs. Arneaud pointed out, "and there was testimony by a witness who had identified a Vietnamese fingerprint on a copy. Now, he's not part of Congress, he's not an American. That stuck in my mind, too."

(The Vietnamese was Vu Van Thai, formerly Saigon's ambassador to Washington and a consultant to the Rand Corp. while Ellsberg was a researcher there. Thai became an unindicted coconspirator in the case because Ellsberg showed him the documents in late 1969 while

photocopying them at a Hollywood advertising agency.)

Mrs. Arneaud added that she preferred the "cut-and-dried" approach of the government, in which "questions were asked and answered," to the "emotion" of the defense.

But she said that after reading the newspapers today for the first time in months, she is concerned about the Watergate affair and governmental misconduct in the Pentagon Papers case. "There has to be a change in the government, there's no doubt about it. The power is overwhelming. I'm just a little guy. I think I've come to the conclusion that I'm very insignificant. I just want our country to survive," she told a reporter.

The jurors were nearly unanimous on a few points, including their sense of taking part in a historical event and their high regard for Judge Byrne.

Phyllis E. Ortman, at 27 one of the youngest members of the jury and one who was pegged by spectators from the start as being "pro-defense" because of her smiles at Ellsberg and Russo, became a virtual Los Angeles celebrity overnight, as she was interviewed on television stations.

She said today that she came away from the trial "a little wiser and a little sadder."

"I had wished for a long time the war could be over and everyone could come home," Mrs. Ortman explained. "Then when you sit through something like this and you listen to the history of the war, and the secrecy, and the way they were telling people something else, it confirms your disillusionment. It made me sad."

Gary R. Leeman, an alternate juror who would not have had an opportunity to participate in deliberations on the case unless three jurors had been disqualified, frankly admitted that he was jealous of the 12 who sat in the main part of the jury box.

A young man with strong antiwar views, he said that if Ellsberg and Russo had been convicted by the others he probably would have wept for them.

Most of the jurors kept track of the trial in notebooks provided by the court, and Donna R. Kelpé said she hoped she would be able to get back the four that she filled, in order "to write a book" or at least to keep them for her children.

She said that her notes included such information as the days on which movie actor George Segal and other celebrities were in the courtroom.

Like several other jurors, Mrs. Kelpé felt somewhat cheated out of the opportunity to render a verdict on the charges against Ellsberg and Russo. (She said she considered the prosecution evidence so weak that she could have voted for acquittal even without hearing a word from the defense.)

At the least, she complained, Byrne should have invited the jury back to the courtroom on Friday to hear him dismiss the case, and she promised to write him a letter expressing that view.

Apart from that mild protest, however, the jurors were universally admiring of the judge's conduct of the trial.

~~"Whatever our mood"~~
such as time off for a doctor's appointment—"he took care of them," one juror said. Others expressed a feeling of honor that he had

personally phoned them Friday afternoon to tell them the trial was over.

And Mrs. Kelpé added that Byrne, a 42-year-old bachelor well-known in Los Angeles social circles, "made good scenery" during boring moments in the trial.

The jurors readily agreed to give their assessments of the dozens of witnesses who testified on both sides during the trial.

Monellis Pittman, an auto worker who was the apparent favorite to become foreman of the jury, said McGeorge Bundy, the former national security adviser to Presidents Kennedy and Johnson, who was a defense witness, impressed him most.

Mrs. Neal preferred Brig. Gen. Paul F. Gorman, a prosecution witness, and Chester Ronning, a retired Canadian diplomat who testified for the defense. She said she "felt sorry" for former Alaska Sen. Ernest Gruening, who approached the witness stand with a cane to testify for the defense and had trouble with his hearing aid.

Several jurors, including Mrs. Duhigg, suggested that "it hurt the defense" to present testimony from antiwar activist Tom Hayden, because of his "radical" views and the unpopularity here of his wife, actress Jane Fonda.

Whatever the testimony, a few people inevitably said that they formed their judgments on the basis of instinctive feelings in favor of the defense.

Dalcy V. Embree, a jazz pianist who used to perform in night clubs and now teaches music students, for example, said, "I looked at Mr. Ellsberg's face everyday, and he looked like an honest man to me."

Deliberations would have been long, most jurors predicted, since they had developed a curiosity about the contents of the Pentagon Papers.

Mrs. Boutelier feared it might take as much as three weeks for everyone to complete the reading before rendering a verdict and that, if sequestered during that time, she would miss her son's wedding and the first visit in 27 years from her sister in Australia.

In the end, one of the clearest things about this jury was the extent to which it was a cross-section of the community, whose members came, as Leeman put it, "from all walks of life."

The end of the trial meant that what one juror called "our little family" had to dissolve. In the midst of the dancing and revelry at the victory party, as the pre-dawn fog swept over the Los Angeles hills, there were some touching farewells between people who now must return to very diverse social strata.

A few hung on to the last, however. This morning, Mrs. Neal, still wisecracking, and Leeman, rubbing his eyes with fatigue, showed up at Ellsberg's and Russo's press conference at a downtown hotel. Then Mrs. Neal went to the defense lawyers' office to have a look . . .



United Press International

Pentagon Papers juror Phyllis Ortman chats with Daniel Ellsberg at victory party in Beverly Hills, Calif.



United Press International

Pentagon Papers defendant Anthony J. Russo Jr.
speaks at press conference yesterday in Los Angeles.

c-6 The Ellsberg Fiasco

Given the facts that had been disclosed during the past two weeks, Judge W. Matthew Byrne Jr. had no choice but to dismiss charges against Daniel Ellsberg and Anthony Russo Jr. The government had so mangled the investigation into their conduct and the prosecution had been so confused by its own inability to find out what had happened that separating legitimate from illegitimate evidence had become well nigh impossible. That is unfortunate: the country and, for that matter, the defendants deserved better.

If Ellsberg and Russo were guilty of crimes, they ought to have been convicted and punished. If their acts did not constitute crimes—and whether they did or not is the principal legal question left unresolved—they ought to have been acquitted. As it stands, the fundamental issues raised by the Pentagon Papers affair are still unresolved. Does the disclosure of classified information to the American public violate existing laws? If it does, do the laws abridge the First Amendment?

These questions are unresolved not because of anything Mr. Ellsberg and Mr. Russo did but because of the zeal (to put it kindly), bad judgment (to carry kindness still further), and essential lawlessness (to be blunt about it) of various government officials. A doctor's office was burglarized in violation of the laws of California; the Central Intelligence Agency was ordered (or at least persuaded) to aid in a domestic investigation in violation of the laws of the United States; the trial judge was approached with a new job offer by the White House in violation of well-known standards of judicial ethics; facts were concealed from the judge (and apparently from the prosecutors); records were destroyed—and lies were told.

Once all of this began to become known in a sudden flood of information, the Ellsberg trial turned from the three-ring circus it had already been into a farce. The judge had the responsibility of rejecting any evidence procured by the government through illegal means. Yet the government prosecutors in the courtroom couldn't tell him (a) whether any of the known illegal activities engaged in by government had produced evidence; (b) whether other illegal activities might have occurred; or (c) why or how the records which might provide that information had disappeared. Yes—disappeared. The situation was described accurately by Judge Byrne this way: "Much information has been developed, but new information has produced new questions, and there remain more questions than answers."

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The inability of the government to provide those answers sharply limited Judge Byrne's options and he chose the fairest one available. His decision represented neither the triumph of justice nor the vindication of Daniel Ellsberg. It was, however, a demonstration that the government and the government's agents cannot operate outside the law and expect to have their lawless activities condoned by the courts. That is a lesson—an old lesson straight out of the law books—and one the Nixon administration has never seemed to learn. The Ellsberg case was not the first, and it may well not be the last case, which this administration has thrown away because some of its highest officials saw nothing wrong in using whatever means were at hand—and never mind the law—for reaching whatever goal they chose to believe, in their own view of the "national interest," was more important.

By MARY McGRORY

E-1 Your Tax Dollars at Work

Before it ended in a mistrial and dismissal of all charges, the trial of Daniel Ellsberg turned into Watergate West, a devastating exposure of the worst excesses of the Nixon administration and its hypocrisy on law and order.

By purloining and publishing the Pentagon Papers, Ellsberg hoped to arouse the country to the outrage of the Vietnam war. That effort was a dismal failure. But now he has become the unwitting agent of alerting Americans to corruption in the White House.

The issue, Ellsberg's doughty defense counsel, Leonard Boudin, told the court recently, is no longer "what we have done to the government of the United States, but what the government has done to us."

Both Watergate East and West reveal what Italian journalist Oriana Fallaci recently reminded us is the propensity of the White House tribe, "to devour the liver of the enemy."

But Watergate East, the break-in of the Democratic National Committee, was, after all, paid for by eager or alarmed Republicans who coughed up millions to save the country from unknown dangers from the left.

Watergate West was a government operation, paid for from start to finish by public funds.

The thieves who broke into Dr. Ellsberg's psychiatrist's office could have posted a sign such as is seen on highways under construction: "Your tax dollars at work."

E. Howard Hunt Jr. and

G. Gordon Liddy were then White House employees. Hunt had an office in the White House — the contents of his safe are a whole other chapter — and Liddy was retained as a \$100-a-day White House consultant.

The break-in was plotted at the White House in Room 16. One of those who sat around the table, by his own admission, was a young White House aide, charged with responsibility for the District of Columbia. Probably nothing that has come out in the last two weeks has more jarred Washingtonians than the news that a break-in was being encouraged in the White House.

Egil Krogh Jr. sent an affidavit to the trial judge — who, it should not be forgotten, was being tempted by White House aide John Ehrlichman, on office time, with the FBI directorship.

"My decision," Krogh wrote, was "dictated inescapably by the vital national security interests of the U.S."

When the national security interests of the United States are served by what Hunt called "a bag job," we are living in another world.

Ellsberg, in his naivete, thought that American citizens would revolt at the details of how their tax funds were being used to blow up villages and napalm peasants half a world away. It remains to be seen how they feel about subsidizing burglaries at home.

Burglary is a subject of passionate concern to residents of the District. They live behind locked doors and barred windows, they carry more keys than the

warden of Lewisburg. They must be at least sourly amused to hear that Liddy and Hunt, who had the resources of the CIA behind them, failed.

So many independent operators hereabouts, with no cooperation from government agencies save perhaps the Welfare Department, have done so much better.

Hunt and Liddy, those two soldiers of misfortune, are the link between East and West.

Asked to characterize the Ellsberg break-in, Hunt, who rummaged through State Department files at will, replied coolly:

"I would simply call it an entry operation conducted under the auspices of competent authority." It shows a grasp of bureaucratese which would apply as well to the Bay of Pigs, another "entry operation" of which he and Liddy are alumni.

Their failure was not held against them at the White House, where loyalty is prized above competence. They were transferred to CREEP, where another historic fiasco awaited them. They were foiled by an \$80-a-week security guard named Frank Wills.

The consequences of Watergate West are potentially far more damaging.

High-level Republicans, who bravely protest that the public may be getting "bored" with East, dare not contemplate West. They always knew Ellsberg was a menace, but they saw he could not turn the country out of the war. Now they fear he might inadvertently turn Richard Nixon out of the White House mandate and all.

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Everything Came Up Roses in Ellsberg Country

By THEO WILSON

Staff Correspondent of THE NEWS

Los Angeles, May 12 — The Pentagon Papers trial judge found flowers in his car. Most of the trial jurors went to a "victory party" and told Daniel Ellsberg and Anthony Russo Jr. they would have found them innocent. The defendants and their lawyers held a press conference and said they were "humble," "happy," and now hopeful that their trial had helped to open a new era of "warmth" with "no more secrets kept from the American people."

U.S. District Court Judge Matt Byrne, Jr., who dismissed the indictment and declared a mistrial because of misconduct by federal agencies and the White House, found the flowers in his auto when he left the courthouse yesterday. They had been left there by jubilant members of the trial defense team.

The jurors attended the party last night at the home of Stanley Sheinbaum, chief of the defense

legal fund, who told reporters today that the fight to free Ellsberg and Russo had cost more than \$500,000.

"High Cost of Freedom"

"This is a high cost to pay for freedom," Sheinbaum said today. "But it is the best money spent in this country in a long, long time. Because of what happened at this trial, it has been revealed what has been going on in Washington."

The bearded fund-raiser was referring to the disclosures, made public during the last 10 days of the trial, of White House interference with this case involving not only President Nixon and some of his former top aides, but the illegal activities of E. Howard Hunt Jr. and G. Gordon Liddy, who burglarized Ellsberg's psychiatrist's office before they bugged the Watergate.

Suit Was Filed

Chief defense attorney Leonard Boudin said today that a civil damage suit would be filed in Federal District Court in Washington to make it possible to "find out all the evidence of government misconduct not yet produced at the Pentagon Papers trial."

The lawyer said: "In a civil

lawsuit we have very wide rights of discovery through the examination of witnesses and defendants."

He pointed out that a civil suit was filed last year in Washington on behalf of all the defendants, defense lawyers and consultants against former government officials for illegal wire-tapping.

A mysterious FBI wiretap on Ellsberg was one of the many "bizarre" events described by the judge yesterday when he cleared

the defendants of espionage, conspiracy and theft charges.

The judge said that the revelations from his investigation had offended "a sense of justice." He said also, "The bizarre events have incurably infected the prosecution of this case."

He Has New Project

Ellsberg, Russo, their wives and other defense attorneys also spoke at a press conference and Russo announced that he already was involved in a grass-roots projects to impeach Nixon.

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Russo, 36, said that impeachment information centers would be established throughout the country, so that citizens could keep informed on the "Watergate mess," and the legality, traditions and precedents involved in impeachment.

Russo said that the American people have felt "powerless, like grains of sand" and that feeling stems from "the overblownness of the presidency."

Ellsberg, the 42-year-old former Defense Department "hawk" who leaked the Pentagon Papers in 1971 in an attempt to stop the Vietnam war, said, "The war is not over, and those of us who oppose it still have a job to do."

Would Name Nixon

He said that he was interested in Russo's impeachment project "because it is important to prove that no American is beyond the law. I personally have thought enough about Richard Nixon in my lifetime, and rather than take part in impeachment programs, I prefer never to think about him again."

The defense lawyers had said that they would name Nixon in their damage suit "if we get the substantial evidence we need, and we believe we are getting it every day."

Ellsberg said that the President "gave us our day in court. We would like to do the same for him."

Going Back to His Wife

The reporters at the conference burst into laughter when Ellsberg told them: "We had a fine relationship for the last two years—but now I'm going back to my wife!"

Patricia Ellsberg, who married Ellsberg in 1970, broke her usual silence in public to say that she was "so moved" by the events of yesterday that she had to speak. She said she had "the greatest Byrne charge the government with misconduct, and not confine himself to a technical wiretap issue as he could have done."

Mrs. Russo, who is known as Ms. Katherine Barkley, said she has one immediate project: "I am looking forward to speaking to all of the jury. I want to find out what came across to them at the trial; and if they understood what we were trying to do, then all of the money it cost, was worthwhile."

Nine for the Defense

At the victory party yesterday, the nine jurors said that they would have found the defendants innocent. The case had been concluded, and was ready to go to them, when the disclosure of the burglary by the Watergate conspirators halted proceedings as Byrne conducted an investigation which revealed for the first time White House links to the illegal acts of Liddy and Hunt.

One juror, who did not attend the party, told reporters she did not think Ellsberg and Russo had been right in what they did, and she did not think she would have acquitted them. Another juror said he did not think Ellsberg should have released the secret war history in the manner he did, by leaking it to newspapers. But the majority of the jurors said they would have voted for acquittal and they believed that this is the verdict that would have been returned.

These same jurors said they had such confidence in Byrne that they were glad he had dismissed the case, although they were disappointed they could not participate. They said that after the dismissal, they were called at home yesterday by the court clerk and told that they did not have to return any more. Then, they said, Byrne himself got on the phone and told each one of them that he thanked them and that they had performed their citizens' duty by their "attention and courtesy" throughout the 19-week trial.

Less than an hour after Byrne dismissed the trial yesterday, he was back on the bench in his courtroom, hearing another case.



UPI Telephoto
Daniel Ellsberg with wife, Pat, at his side offers champagne to juror Donna Kelp at posttrial party.

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 Mr. Eardley _____
 Mrs. Hogan _____

WJ

WJ

Ellsberg Seen Freed If Jury Had Decided

By Sanford J. Ungar and Leroy A. Aarons

Washington Post Staff Writers

LOS ANGELES, May 11—If the Pentagon Papers case had ever gone to the jury, Daniel Ellsberg and Anthony J. Russo Jr. probably would have been acquitted of federal charges of conspiracy, espionage and theft of government property.

But that verdict might have been a long time in coming, because there was at least one holdout in the jury box and because many of the jurors—to the surprise of most participants in the trial—intended to read large sections of the documents before reaching a final decision.

Those are the tentative conclusions based upon interviews by The Washington Post with several of the ten women and two men jurors who heard evidence in the case since January.

U.S. District Court Judge W. Matt Byrne Jr., citing governmental misconduct that had hopelessly violated the rights of the defendants, declared a mistrial Friday and dismissed all charges against Ellsberg and Russo.

It is considered highly unlikely that they will ever be tried again on those charges, because Byrne terminated the case in a way that makes it virtually impossible for the Justice Department to circumvent the Fifth Amendment ban on "double jeopardy."

For most of the jurors, who qualified for service largely on the basis of their prior lack of knowledge about the case, the four-month-long trial was an eye-opening experience.

Some say that it changed their lives.

"I was a typical apathetic American" before the trial, explains Joan B. Duhigg, a housewife from Huntington Beach. "But this has awakened me to what is going on... I'm going to read ... and I might even march" against government policies in the future.

Cora C. Neal, known as "Corky" to her fellow jurors and the apparent gadfly of

See JURORS A8, Col. 1

Pentagon Papers defense cost \$900,000. Page A8.

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the jury room, feels the same way.

Between her job at the General Telephone Co. in Santa Monica and night courses at a local community college, she said today, she rarely had time to read the newspapers or books on current affairs. "But I'll have to find time now. I've got a long reading list. Nearly every witness in the case wrote a book."

Mrs. Neal, a widow, said it was "rather surprising" to learn, from testimony about the Pentagon Papers, that the ~~American~~ government often did one thing in Southeast Asia while telling the public it was doing another.

She and Mrs. Duhigg were among the seven jurors and one alternate who attended the Ellsberg-Russo defense's "victory party" in Beverly Hills Friday night.

They stayed until nearly three o'clock in the morning, talking for hours with the defendants, their wives, lawyers and aides. "It was so nice to meet everyone that I feel like I've known for such a long time," Mrs. Duhigg said today.

Most of the jurors at the party arrived with an obvious feeling of hesitancy — each apparently having the same concern expressed by Margaret C. Kaschube: "Am I the only one?"—and brought two or three friends and relatives along for moral support.

It was an opportunity for them, above all, to ask questions and to fill in some of the gaps in the evidence.

Jean E. Boutelier, for one, took a reporter aside and quizzed him about how his newspaper had made the decision in 1971 to publish articles based on the Pentagon Papers. She said she felt "better" to learn that editors had weighed the relationship of the documents to the "national defense," a consideration more recently thrust upon the jury.

Mrs. Boutelier, a housewife from Cypress in conservative Orange County, brought her son Kim along, and he joked that he had originally felt his mother "was too much of a ~~redneck~~ to ever get selected for that jury."

But she surprised him as the trial went on and she began to lean toward the defense. "I just couldn't see convicting those men of espionage," Mrs. Boutelier told a reporter.

One juror who did not attend the party was Darlene Y. Arneaud, a divorced mother of two who is also caring for five nephews and recently removed herself voluntarily from the welfare rolls.

She acknowledged in a telephone interview today that she had distinctly favored the prosecution case.

Ellsberg "admitted copying" the Pentagon Papers, Mrs. Arneaud pointed out, "and there was testimony by a witness who had identified a Vietnamese fingerprint on a copy. Now he's not part of Congress, he's not an American. That stuck in my mind, too."

(The Vietnamese was Vu Van Thai, formerly Saigon's ambassador to Washington and a consultant to the Rand Corp. while Ellsberg was a researcher there. Thai became an unindicted coconspirator in the case because Ellsberg showed him the

documents in late 1969 while photocopying them at a Hollywood advertising agency.)

Mrs. Arneaud added that she preferred the "cut-and-dried" approach of the government, in which "questions were asked and answered," to the "emotion" of the defense.

But she said that after reading the newspapers today for the first time in months, she is concerned about the Watergate affair and governmental misconduct in the Pentagon Papers case. "There has to be a change in the government, there's no doubt about it. The power is overwhelming. I'm just a little guy. I think I've come to the conclusion that I'm very insignificant. I just want our country to survive," she told a reporter.

The jurors were nearly unanimous on a few points, including their sense of taking part in a historical event and their high regard for Judge Byrne.

Phyllis E. Ortman, at 27 one of the youngest members of the jury and one who was pegged by spectators from the start as being "pro-defense" because of her smiles at Ellsberg and Russo, became a virtual Los Angeles celebrity overnight, as she was interviewed on television stations.

She said today that she came away from the trial "a little wiser and a little sadder."

"I had wished for a long time the war could be over and everyone could come home," Mrs. Ortman ex-

plained. "Then when you sit through something like this and you listen to the history of the war, and the secrecy,

and the way they were telling people something else, it confirms your disillusionment. It made me sad."



Daniel Ellsberg and his wife, Patricia, listen as Pentagon Papers codefendant Anthony J. Russo Jr. speaks at a vic-

tory press conference yesterday after all charges against the two men were dismissed Friday in Los Angeles.

United Press International

Ellsberg Team Cost \$900,000 for Trial

By a Washington Post Staff Writer *A-8*

LOS ANGELES, May 12—The year-long trial of Pentagon Papers defendants Daniel Ellsberg and Anthony J. Russo Jr. cost the defense team nearly \$1 million, according to figures released today.

Stanley K. Sheinbaum, a wealthy Los Angeles economic consultant who headed the legal defense fund, placed the cost at \$900,000, or an average of \$60,000 to \$70,000 a month.

He said the fund has a deficit of \$50,000 to \$75,000.

Justice Department officials reached today could not say how much the trial cost the government, but unofficial estimates, including diverted manpower and resources, have placed it at nearly twice the cost to the defense.

Sheinbaum itemized the monthly costs roughly as follows: witness expenses, \$15,000; legal fees to lawyers, \$13,000; transcripts, \$8,000; telephones, Xeroxing, consultants and paralegal research, \$5,000 each, and office and apartment rentals, \$4,000.

Discussing fund raising, Sheinbaum revealed that the largest single one-time contribution came from Los Angeles millionaire Max Palevsky, who helped fund the early part of the McGovern presidential campaign in 1972 and is now campaign director for Los Angeles mayoralty candidate Tom Bradley. Palevsky gave \$25,000.

Sheinbaum said there were two other individuals, whom he would not name, who gave \$40,000 each over a period of time. Other donations ranged from \$1 to \$5,000.

"There were three basic approaches toward fund raising," said Sheinbaum, a longtime antiwar activist and Southern California finance chairman for McGovern last year. "One, a million letters were mailed. Two, Dan and Tony were on the road for dinners, speeches, cocktail parties. Three, myself on the phone to big givers."

A benefit concert by Barbra Streisand on Ellsberg's birthday, April 7, yielded \$50,000, said Sheinbaum, who described himself as "52 and tired."

Sheinbaum appeared with Ellsberg, Russo, two of the three defense attorneys and a portion of the large defense staff at a news conference this morning. A victory party Friday night, attended by friends, jurors and the press, had lasted until 3 a.m.

"The war is not over," said Ellsberg, "but I believe that in a long struggle to keep your strength you celebrate when you can celebrate."

Ellsberg said he planned to return "to a fairly private life of research, writing and reading."

His co-defendant, Russo, said he planned to write a book to vent some of the frustrations built up in the courtroom, where the lawyers did most of the talking. "I felt I had to commit myself to writing a book to get my ideas across."

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Chief defense attorney Leonard Boudin elaborated on previous reports that the defense intended to ~~sue the~~ government for civil damages.

Noting that there already was a civil suit in U.S. District Court in Washington regarding illegal government wire-tapping, Boudin said the defense would carefully study grounds for an expanded action "not for drama, but for securing redress and getting damages, and also for the purpose of serving as a deterrent against similar government activity in the future."

He added that President Nixon might be included as a defendant in such a suit if "the evidence justifies it."

Defense lawyer Charles R. Nesson, a Harvard law school professor, said the Pentagon Papers trial contributed "to a reawakening of spirit the country, a reassertion of the principles of integrity, and honesty."

Nesson said he saw the case as part of "the end of an era, a page in the last chapter that began with the Cold War, a page that has to be turned to get back to something that looks like warmth in the country."

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Ellsberg Set To Sue U.S.

LOS ANGELES (UPI) — The attorney for Daniel Ellsberg said yesterday a damage suit would be filed in Washington against Nixon administration officials to recover part of the estimated \$900,000 spent by the defense in the Pentagon papers case.

But attorney Leonard Boudin said plans presently did not include charging President Nixon in such a suit in connection with the burglary of Ellsberg's psychiatrist's office and wiretapping of Ellsberg's phone calls.

"The evidence against the president is substantial but circumstantial," Boudin said. "Unless enough evidence can be produced to justify his being named, Mr. Nixon will not be included."

ELLSBERG, codefendant Anthony J. Russo, their wives, lawyers and staff held a press conference yesterday.

It followed a champagne victory party in Beverly Hills Friday night attended by about 300 persons, including nine jurors, after U.S. District Judge Matt Byrne dismissed all charges against Ellsberg and Russo on grounds of government misconduct.

The 42-year-old Ellsberg, referring to the party and his conversations with the jurors, said the defense now knew it would have had an outright acquittal if the case had gone to the jury.

Asked about his future plans, Ellsberg said he planned to spend a considerable period with his wife, Patricia, and then go back to "research, writing and reading."

"The press has performed most honorably in the past months," Ellsberg said. "Now the press is being joined by Congress and the courts to expose the misconduct of the executive branch."

RUSSO, 32, said he planned to spend a year writing a book.

In the meantime, Russo said, he intended to work on a "national impeachment effort" against Nixon.

Russo said he was flying to Chicago for a meeting to discuss that action to be attended by hundreds of people including Angela Davis, the Rev. Ralph Abernathy and leaders of the American Indian Movement.

Ellsberg was asked whether he would join such an impeachment movement.

"I've been thinking about Richard Nixon for several years," Ellsberg replied. "I've thought enough about him. I hope never to think about him again."

Ellsberg and Russo, while winning the case finally, failed in one of their key ambitions: to make the trial a public test of the administration's Vietnam war policy. Various attempts by their attorneys to turn evidence toward the legality of the war were blocked by Judge Byrne.

HOWEVER, the trial near its end did achieve another. Ellsberg-Russo goal: to seriously embarrass the Nixon administration. The startling revelations of government misconduct summed up by

Judge Byrne in his dismissal ruling had been costly to the government's public image.

The end of the trial, however, apparently brings an end to further major revelations of that kind. Justice Department sources have said that, for this reason alone, the government will be quite content to have the case over.

Lingering questions, particularly about the scope of government eavesdropping in sensitive cases, may be answered by continuing FBI inquiries first prompted by Judge Byrne. However, it is not clear that all or even most of those answers will be made public, now that Byrne has no further need for them.

Boudin said the proposed damage suit would be carefully put together and that he could not say when it would be filed. He said such a suit would require a hearing in which the defense intended to call persons implicated in what Judge Byrne characterized as violating "a sense of justice" in the prosecution of Ellsberg and Russo.

THE ATTORNEY named no individuals but he had asked at the Pentagon papers trial for the summoning of former Atty. Gen. John Mitchell,

See ELLSBERG Page A-5

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ELLSBERG

Continued From Page A-1

White House aides John Ehrlichman and H. R. Haldeman, ousted presidential counsel John Dean, former FBI acting director L. Patrick Gray and a host of other Nixon aides.

Stan Sheinbaum, the defense fund raiser at whose home the victory party was held into the early morning hours, estimated that the case and the trial had cost \$900,000. He said about \$840,000 had been raised through contributions.

A poll of the jurors at their homes after the dismissal revealed that several favored acquittal and most of the others were "leaning" toward it. (The Associated Press said seven jurors said they were for acquittal).

In his brief remarks at the news conference, Ellsberg said there had been a victory but "the war is not over."

"There have been 145,000 tons of bombs dropped on Cambodia since the so-called cease fire — more than was dropped on Japan in all of World War II," he said.

Ellsberg Plans To Sue U.S.

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"The special unit apparently operated with the approval of the FBI, the agency officially charged with the investigation of this case. . . .

"The special unit came to Los Angeles and surveyed the vicinity of the offices of the psychiatrist of one of the defendants. After reporting to a White House assistant and apparently receiving specific authorization, the special unit then planned and executed the break-in of the psychiatrist's office in search of the records of one of the defendants.

"The Central Intelligence Agency, presumably acting beyond its statutory authority, and at the request of the White House, had provided disguises, photographic equipment and other paraphernalia for covert operations."

Byrne added: "The defendants and the court do not know the other activities in which the special unit may have been engaged and what has happened as a result of these endeavors."

What It Costs
To Defend Yourself
Against the Government

by Lloyd Shearer

Why should any man spend almost two years of his life and much of his own wealth raising \$900,000 for the Pentagon Papers Legal Defense Fund?

That's approximately how much it cost to defend Daniel Ellsberg and Anthony Russo. And the man who raised that amount is Stanley K. Sheinbaum, 52, a tall, bearded former Michigan State University economics professor.

Sheinbaum, of Santa Barbara, Calif., married for the last nine years to Betty Sperling, a daughter of movie mogul Harry Warner, says, "I became involved with the defense team, because it seemed to me that the case represented some major principles: Do the American people have the right of access to studies they pay for? Do they have the right to see papers which have been improperly and arbitrarily classified? Do they have the right to know as much truth or as little truth as their government chooses about a war into which they poured their blood and treasure? Are men who make the truth available to the American public guilty of espionage? If a man copies papers which have been made available to him so that he can give them to a member of Congress, does that constitute theft?

20,000 contributors

"These were some of the first-time questions which intrigued me, so I became involved in seeing that Ellsberg and Russo were granted a fair trial. A fair trial costs money in this country, and more than 20,000 individuals contributed to the Pentagon Papers Legal

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Defense Fund. I raised money through mass mailings and got about 40 percent that way. The remainder came through cocktail parties, dinners, lectures, a Barbra Streisand entertainment dinner, and from the defendants themselves. Ellsberg and Russo contributed about \$75,000 to the fund by making speeches and writing articles. That \$75,000 covered about one month's expenses. And remember, the indictment against the defendants was issued on July 1, 1971. That's a long time ago.

Wealthy opponent

"People just don't seem to realize how much it costs to defend themselves when the government moves against them. The government, of course, has limitless funds and almost limitless personnel to employ. I would guess the Pentagon Papers trial cost the government close to \$3 million. It's really impossible to tell. Maybe more, maybe less.

"Who knows how many FBI men they used on the case and for how long, or how many clerks, or how many transcripts they ordered? One day's transcript costs about \$180. A good lawyer costs about \$50 an hour.

"All five attorneys defending Ellsberg and Russo contributed much of their own time for nothing. Right at this moment we owe Leonard Boudin, one of Ellsberg's lawyers, about \$60,000. We're still about \$75,000 in the hole.

"Tony Russo twice appealed to the court to grant him pauper status so he could get some government financial assistance in paying for transcripts and witness expenses, but the judge ruled against him.

Liberals hold back

"For a while I thought we might get some wealthy liberals to come across with \$50,000 at a crack, but we had no such luck, except with Ellsberg's wife; she contributed about \$100,000 by borrowing on her trust funds." [Mrs. Ellsberg is the daughter of Louis Marx, founder of the Marx Toy Company who refused to contribute a dollar to the defense. He is an avowed conservative and close friend of Pentagon officials and generals.]

Sheinbaum, who is an expert on international finance and engages in long-term arbitrage, plans to spend the next three months with his wife on a small island, Gilo, off the west coast of Italy, on which they own a home.

"After two years of running my fanny off," he says, "I believe I deserve it. Working for a cause and a principle carries its own rewards, but it sure is tiring as hell. If I had to do this all over again I'd probably commit suicide."



Defendant Daniel Ellsberg and wife with Stanley K. Sheinbaum, ex-economics professor who has raised

\$900,000 for Pentagon Papers Legal Defense Fund. "I got involved," he says, over "major principles."



Sheinbaum with his wife Betty. He ruefully points to the unlimited money at the government's disposal while the defense fund is "still about \$75,000 in the hole"

5 JURORS AT VICTORY PARTY

Ellsberg Considering Filing Damage Suit Against Nixon

BY TENDAYI KUMBULA and DAVID ROSENZWEIG

Times Staff Writers

The Pentagon Papers defendants, elated by a victory party in which they were hugged and kissed by some of their jurors, Saturday expressed thanks for dismissal of charges.

At the same time, chief counsel Leonard Boudin said that immediate consideration is being given to a possible civil damage suit against President Nixon.

At the victory celebration Friday night, Daniel Ellsberg, barefoot and clad in faded corduroy pants and a rumpled shirt, clambered over a couch to receive a warm hug from Jean Boutelier, a juror from Cypress.

"I'm so happy for you," she told him.

Cora Neal, a widow from Santa

Monica who sat in the No. 1 seat of the jury box, shrieked with joy when she arrived at the party. It was the first time she had ever spoken to the defendants.

Ellsberg's co-defendant was Anthony J. Russo. They were charged with espionage, conspiracy and theft.

"My family, my family," she shouted as she embraced and kissed in turn Ellsberg, Russo, their wives, defense attorney Boudin and an assortment of other defense team members.

"Didn't I look mean in the jury box?" she jokingly asked Boudin. "Fooled you, didn't I."

Another juror, Joan Duhigg of Huntington Beach, embraced Russo's wife, Katherine Barkley, and said: "I feel as if I've known you for a long time."

"We know about your sandwiches," she added, referring to the sandwiches Mrs. Russo had sold outside the Federal

Building, each day to support herself and her husband, both of whom have been jobless.

Phyllis Ortman, a juror from Monterey Park, congratulated Ellsberg with a kiss and then said she had learned a lot about the Vietnam war from the four-month trial.

All five jurors said they either were leaning toward the defense or were convinced of the defendants' innocence when U.S. Dist. Judge Matt Byrne declared a mistrial on Friday.

All said that they would have liked to have seen the case go to the jury.

"I feel a little left out," Mrs. Donna Kelpe, a juror from Simi Valley, said clutching a glass of champagne and a copy of a digest of the Pentagon Papers autographed by Russo. "I sat there for four months and I would have liked to have been in on the end."

The five members of the jury were among 300 guests who attended the champagne and cake celebration.

Exchanged Jokes

Amid the din of blaring rock music and shouting well-wishers, the defendants and the jurors exchanged jokes about the trial.

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Ellsberg and Russo peppered the jurors with questions: "Who was the best defense witness? What did you think of the prosecution's case? How did you feel about the long-haired defense lawyers who showed up in court wearing blue jeans and no ties?"

Boudin, speaking at a news conference Saturday at the Los Angeles Hilton, said "evidence against the President so far is substantial but circumstantial."

Ellsberg said the federal government had itself been found guilty of "theft, espionage and conspiracy."

"We will now do our duty to give the President his day in court as he gave us ours," he said.

He also thanked the press for exposing issues involved in the Pentagon Papers case.

Russo said he "felt a great sense of humility when I got up this morning and thought about yesterday. I felt good."

He said the defendants would have preferred that the case go to the jury for a decision. But, he said, continuing stories of government misconduct, including the disappearance or destruction of wiretap surveillance records, compelled defense attorneys to ask Byrne for a mistrial and the dismissal of all charges.

Writing Book

Russo said he is writing a book and has also been told that his old job—he was doing research in the Los Angeles County Probation Department before he was indicted—is still there if he wants it back.

Russo said one of his more immediate concerns is the establishment of Impeachment Information Centers all over the country. These would explore the question of impeaching the President and would also dispense information.

Referring to both Watergate and the Pentagon Papers he said:

"What we have seen is only the surface. The only way to get to the bottom of this is through a grass-roots effort because the President has been less than candid.

"(However) the idea of impeachment is still at the stage of germination."

Boudin said with the trial out of the way the possibility of filing a federal damage suit is now being considered. But he said the suit would not be filed until it had been carefully researched and prepared.

Boudin said he was not sure at the moment if Mr. Nixon would be named as a defendant in the civil case.

A spokesman for the Ellsberg-Russo defense committee said the trial has cost them about \$900,000, which came from more than 20,000 contributors.

"I Can't Understand How We Keep Losing These Conspiracy Cases"



Mr. Felt _____
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Krogh Agrees To Testify f-14 For Grand Jury

LOS ANGELES, May 11 (AP)—A former White House aide who has admitted ordering a break-in at the office of Daniel Ellsberg's psychiatrist has agreed to testify before a county grand jury—apparently without the promise of immunity from prosecution, a deputy district attorney says.

Egil "Bud" Krogh, who resigned Wednesday as under-secretary of transportation agreed yesterday to testify at the grand jury hearings scheduled for June 5-8, said Deputy Dist. Atty. Richard Hecht.

Though Hecht indicated that Krogh was not promised immunity, he said he was prepared to offer convicted Watergate conspirator E. Howard Hunt such protection if he testified before the grand jury. Hecht said Hunt was "on the verge" of agreeing to testify.

Krogh and Hunt have detailed their roles in the break-in through affidavits subsequently made public at the Pentagon papers trial in which Ellsberg and Anthony Russo are being tried on espionage, conspiracy and theft charges.

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Judge Byrne on Dismissal

The following is a partial text of U.S. District Court Judge W. Matt Byrne's comments when he dismissed charges against Daniel Ellsberg and Anthony Russo yesterday in Los Angeles:

Commencing on April 26, the government has made an extraordinary series of disclosures regarding the conduct of a total government operation regarding the defendant in this case. It is my responsibility to assess the effect of this conduct upon the rights of the defendants.

As the record makes clear, I've attempted to require the government and to allow the defendant to develop all relevant information regarding disclosures. Much information has been developed, but new information has produced new questions, and there remain more questions than answers.

THE DISCLOSURES made by the government demonstrate that governmental agencies have tak-

en an unprecedented series of actions with respect to these defendants. After the original indictment, at a time when the government's rights to investigate the defendants are narrowly circumscribed, White House officials established a special unit to investigate one of the defendants in this case. The special unit apparently operated with the approval of the FBI, the agency officially charged with the investigation of this case.

We may have been given only a glimpse of what this special unit did regarding this case, but what we know is more than disquieting. The special unit came to Los Angeles and surveyed the vicinity of the offices of the psychiatrist of one of the defendants. After reporting to a White House assistant and apparently receiving specific authorization, the special unit then planned and executed the break-in of the psychiatrist's office in search of the records of one of the defendants.

The Central Intelligence Agency, presumably ac-

ing beyond its statutory authority, and at the request of the White House, had provided disguises, photographic equipment and other paraphernalia for covert operations.

Of more serious consequence is that the defendant and the court do not know the other activities in which the special unit may have been engaged and what has happened to the results of these endeavors. They do not know whether other material gathered by the special unit was destroyed, and though I have inquired of the government several times in this regard, no answer has been forthcoming.

THOUGH SOME governmental officials were aware of the illegal activities of this unit directed at the defendant, and thus at this case, the court, nor the defendants nor apparently, the prosecution itself, was ever aware of these facts until Mr. (Watergate) prosecutor Earl J. Silbert's memorandum, and then not for some ten days after it had been written.

These recent events compound the record already pervaded by incidents threatening the defendants' right to a speedy and fair trial. The government has time and again failed to make timely productions or exculpatory information in its possession requiring delays and disruptions in the trial.

Within the last 48 hours, after both sides had rested their case, the government revealed information that

Bureau of Investigation.

The FBI reports that, while the files did once exist regarding this surveillance, they now appear to have been removed from both the Justice Department and the FBI files. It is reported by the FBI that the records have been missing since 1971.

THERE IS NO WAY the defendants or the court or, indeed, the government itself can test what effect these interceptions may have had on the government's case here against either or both of the defendants. The delays already encountered threaten to compromise the defendants' rights and the effect on this case that is paramount, and each passing day indicates that the investigation is further from completion as the jury waits.

Moreover, no investiga-

tion is likely to provide satisfactory answers where improper government conduct has been shielded so long from public view and where the government advises the court that pertinent files and records are missing or destroyed.

The charges against these defendants raise serious factual and legal issues that I would certainly prefer to have integrated to completion. However, the conduct of the government has placed the case in such a posture that it precludes the fair dispassionate resolution of these issues by a jury.

In considering the alternative before me, I have carefully weighed the granting of a mistrial without taking any further action. The defendants have opposed such a course of action, asserting their rights, if the case is

to proceed, to have the matter tried before this jury. I have concluded that a mistrial alone would not be fair.

Under all the circumstances, I believe that the defendants should not have to run the risk, present under existing authorities, that they might be tried again before a different jury.

The totality of the circumstances of this case which I have only briefly sketched offend "a sense of justice." The bizarre events have incurably infected the prosecution of this case.

I am of the opinion, in the present status of the case, that the only remedy available that would assure due process and a fair administration of justice is that this trial be terminated and the defendants' motion for dismissal be granted and the jury discharged.

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JUDGE MATT BYRNE

Byrne: 'Bizarre Events ... Incurably Infected' Trial

LOS ANGELES, May 11
—Following are excerpts from the official transcript of the ruling here today by U.S. District Court Judge W. Mark Byrne Jr., dismissing all charges in the Pentagon Papers trial of Daniel Ellsberg and Anthony J. Russo Jr.:

... commencing on April 26, the Government has made an extraordinary series of disclosures regarding the conduct of several governmental agencies regarding the defendants in this case. It is my responsibility to assess the effect of this conduct upon the rights of the defendants. My responsibility relates solely and only to this case, to the rights of the defendants and their opportunities for a fair trial with due process of law.

As the record makes clear, I have attempted to require the government and to allow the defendants to develop all relevant information regarding these highly unusual disclosures. Much information has been developed, but new information has produced new questions, and there remain more questions than answers.

The disclosures made by the government demonstrate that governmental agencies have taken an unprecedented series of actions with respect to these defendants. After the original indictment, at a time when the government's rights to investigate the defendants are narrowly circumscribed, White House officials established a special unit to investigate one of the defendants in this case. The special unit apparently operated with the approval of the FBI, the agency officially charged with the investigation of this case.

We may have been given only a glimpse of what this special unit did regarding this case, but what we know is more than disquieting. The special unit came to Los Angeles and surveyed the vicinity of the offices of the psychiatrist of one of the defendants. After reporting to a White House assistant and apparently receiving specific authorization, the special unit then planned and executed the break-in of the psychiatrist's office in search of the records of one of the defendants.

From the information received, including the last document filed today, it is difficult to determine what, if anything, was obtained from the psychiatrist's office by way of photographs.

The Central Intelligence Agency, presumably acting beyond its statutory authority, and at the request of the White House, had provided disguises, photographic equipment and other paraphernalia for covert operations.

The government's disclosure also revealed that the special unit requested and obtained from the CIA two psychological profiles of one of the defendants.

Of more serious consequences is that the defendants and the court do not know the other activities in which the special unit may have been engaged and what has happened to the results of these endeavors. They do not know whether other material gathered by the special unit was destroyed, and though I have inquired of the government several times in this regard, no answer has been forthcoming.

These recent events compound the record already pervaded by incidents threatening the defendants' right to a speedy and fair trial. The government has

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time and again failed to make timely productions of exculpatory information in its possession requiring delays and disruptions to the trial.

Within the last forty-eight hours, after both sides had rested their case, the government revealed interception by electronic surveillance of one or more conversations of defendant Ellsberg. The government can only state and does only state that the interception or interceptions took place.

Indeed, the government frankly admits that it does not know how many such interceptions took place or when they took place or between whom they occurred or what was said . . .

Of greatest significance is the fact that the government does not know what has happened to the authorizations for the surveillance, nor what has happened to the tapes nor to the logs nor any other records pertaining to the overheard conversations. This lack of records appears to be present not only in the Justice Department, but in the Federal Bureau of Investigation, from the response of both FBI and the Justice Department appear to have been missing . . .

There is no way the defendants or the court or, indeed, the government itself can test what effect these interceptions may have had on the government's case here against either or both of the defendants. A continuation of the government's investigation is no solution with reference to this case. The delays already encountered threaten to compromise the defendants' rights, and it is the defendants' rights and the effect on this case that is paramount, and each passing day indicates that the investigation is further from completion as the jury waits.

The charges against these defendants raise serious factual and legal issues that I would certainly prefer to have litigated to completion. . . . However, while I would prefer to have them litigated, the conduct of the government has placed the case in such a posture that it precludes the fair dispassionate resolution of these issues by a jury.

In considering the alternatives before me, I have carefully weighed the granting of a mistrial, without taking any further action. The defendants have opposed such a course of action, asserting their rights, if the case is to proceed, to have the matter tried before this jury. I have concluded that a mistrial alone would not be fair.

Under all the circumstances, I believe that the defendants should not have

to run the risk, present under existing authorities, that they might be tried again before a different jury.

The totality of the circumstances of this case which I have only briefly sketched offend "a sense of justice." The bizarre events have incurably infected the prosecution of this case. I believe the authority to dismiss this case in these circumstances is fully supported by pertinent case authorities . . .

I have decided to declare a mistrial and grant the motion to dismiss.

I am of the opinion, in the present status of the case . . . that the only remedy available that would assure due process and the fair administration of justice is that this trial be terminated and the defendants' motion for dismissal be granted and the jury discharged.

The order of dismissal will be entered; the jurors will be advised of the dismissal, and the case is terminated.



United Press International
Anthony Russo Jr., left, and Daniel Ellsberg, smiling ex-defendants in Papers case.

Judge Byrne on Dismissal

The following is a partial text of U.S. District Court Judge W. Matt Byrne's comments when he dismissed charges against Daniel Ellsberg and Anthony Russo yesterday in Los Angeles: *AT*

Commencing on April 26, the government has made an extraordinary series of disclosures regarding the conduct of several governmental agencies regarding the defendant in this case. It is my responsibility to assess the effect of this conduct upon the rights of the defendants.

As the record makes clear, I've attempted to require the government and to allow the defendants to develop all relevant information regarding these highly unusual disclosures. Much information has been developed, but new information has produced new questions, and there remain more questions than answers.

THE DISCLOSURES made by the government demonstrate that governmental agencies have taken an unprecedented series of actions with respect to these defendants. After the original indictment, at a time when the government's rights to investigate the defendants are narrowly circumscribed, White House officials established a special unit to investigate one of the defendants in this case. The special unit

apparently operated with the approval of the FBI, the agency officially charged with the investigation of this case.

We may have been given only a glimpse of what this special unit did regarding this case, but what we know is more than disquieting. The special unit came to Los Angeles and surveyed the vicinity of the offices of the psychiatrist of one of the defendants. After reporting to a White House assistant and apparently receiving specific authorization, the special unit then planned and executed the break-in of the psychiatrist's office in search of the records of one of the defendants.

The Central Intelligence Agency, presumably acting beyond its statutory authority, and at the request of the White House, had provided disguises, photographic equipment and other paraphernalia for covert operations.

Of more serious consequences is that the defendants and the court do not know the other activities in which the special unit may have been engaged and what has happened to the results of these endeavors. They do not know whether other material gathered by the special unit was destroyed, and though I have inquired of the government several times in this regard, no answer has been forthcoming.

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THOUGH SOME governmental officials were aware of the illegal activities of this unit directed at the defendant, and thus at this case, the court, nor the defendants nor apparently, the prosecution itself, was ever aware of these facts until Mr. (Watergate prosecutor Earl J.) Silbert's memorandum, and then not for some ten days after it had been written.

These recent events compound the record already pervaded by incidents threatening the defendants' right to a speedy and fair trial. The government has time and again failed to make timely productions or exculpatory information in its possession requiring delays and disruptions in the trial.

Within the last 48 hours, after both sides had rested their case, the government revealed interception by electronic surveillance of one or more conversations of defendant Ellsberg. The government can only state and does only state that the interception or interceptions took place.

Of greatest significance is the fact that the government does not know what has happened to the authorizations for the surveillance, nor what has happened to the tapes, nor to the logs nor any other records pertaining to the overheard conversations. This lack of records appears to be present not only in the Justice Department but in the Federal

Bureau of Investigation

The FBI reports that, while the files did once exist regarding this surveillance, they now apparently have been removed from both the Justice Department and the FBI files. It is reported by the FBI that the records have been missing since mid-1971.

THERE IS no way the defendants or the court or, indeed, the government itself can test what effect these interceptions may have had on the government's case here against either or both of the defendants. The delays already encountered threaten to compromise the defendants' rights and it is the defendants' rights and the effect on this case that is paramount, and each passing day indicates that the investigation is further from completion as the jury waits.

Moreover, no investigation is likely to provide satisfactory answers where improper government conduct has been shielded so long from public view and where the government advises the court that pertinent files and records are missing or destroyed.

The charges against these defendants raise serious factual and legal issues that I would certainly prefer to have litigated to completion. . . . However . . . the conduct of the government has placed the case in such a posture that it precludes the fair dispassionate resolution of these issues by a jury.

In considering the alternative before me, I have carefully weighed the granting of a mistrial without taking any further action. The defendants have opposed such a course of action, asserting their rights, if the case is

to proceed, to have the matter tried before this jury. I have concluded that a mistrial alone would not be fair.

Under all the circumstances, I believe that the defendants should not have to run the risk, present under existing authorities, that they might be tried again before a different jury.

The totality of the circumstances of this case which I have only briefly sketched offend "a sense of justice." The bizarre events have incurably infected the prosecution of this case.

I am of the opinion, in the present status of the case, that the only remedy available that would assure due process and a fair administration of justice is that this trial be terminated and the defendants' motion for dismissal be granted and the jury discharged.



JUDGE MATT BYRNE

—Associated Press

NEW TRIAL BARRED

But Decision Does Not
Solve Constitutional
Issues in Case

By MARTIN ARNOLD

Special to The New York Times

LOS ANGELES, May 11—ing what he called "imp Government conduct sh so long from public vie judge in the Pentagon trial dismissed today all c against Dr. Daniel Ellsbe Anthony J. Russo Jr.

And he made it clear ruling that the two mer not be tried again on

of stealing and copying the Pentagon papers by saying that he was dismissing the charges "with prejudice."

"The conduct of the Govern ment has placed this case in such a posture it precludes the fair and dispassionate consid eration of issues by the jury," he said.

David R. Nissen, the chief prosecutor, said, "It appears that the posture is such that no appeal will be possible."

Defendants Not Vindicated

But the decision by United States District Court Judge Wil liam Matthew Byrne Jr. did not vindicate the defendants; it chastised the Government. Nor did it resolve the important con stitutional issues that the case had raised.

The end of the trial, on its 89th day, was dramatic. The courtroom was jammed; the jury box was filled with news reporters; defense workers in the Ellsberg-Russo cause, most ly young people, sat in chairs lining the courtroom wall.

Dr. Ellsberg and Mr. Russo, surrounded by their lawyers, stared intently as Judge Byrne quickly read his ruling.

The Government's action in this case, he said, "offended a sense of justice" and so "I have decided to declare a mis trial and grant the motion for dismissal." The time was 2:07 P.M.

The courtroom erupted in loud cheering and clapping. The judge barely hiding a smile, quickly strode out the door behind his bench.

Tension had been building for two days, since the sudden disclosure by the Government yesterday that telephone con versations of Dr. Ellsberg were picked up by wiretapping in late 1969 and early 1970, and that all records and logs of those conversations had disap peared from the Federal Bu reau of Investigation.

When this morning the Gov ernment was still unable to produce either the records or a legal authorization for the taps, it was evident that the case had ended.

The jury was not present when the judge read his de cision. It had been sent home until Monday morning.

Before rendering his decision, the judge offered the defend ants the opportunity to go to the jury for a verdict. He said that he would withhold his rul ing on their motion to dismiss if they wanted. He indicated that if they did decide to go to the jury, he would probably dismiss some of the counts— six for espionage, six for theft and one for conspiracy.

He said that he believed enough of the case was left to litigate before the jury, if the defendants so desired. They did not, and then he read his ruling.

"A judgment of acquittal goes to all the facts," he said, but he added that if he ruled on that defense motion, "it would not dispose of all the is sues." That, he said, "can only be done by going to the jury."

He did say, however, that his ruling was based not only on the wiretap disclosures, "or based solely on the break-in" of the office of Dr. Ellsberg's psy chiatrist on Sept. 3, 1971, by agents in the employ of the White House.

But Judge Byrne said that "on

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April 26 the Government made an extraordinary disclosure"—that of the break-in—and that was followed by disclosures that the break-in was done by a "special unit" reporting to the White House.

He said that the special unit "apparently operated with the approval of the F.B.I. and that the C.I.A. also became involved in the prosecution of this case at the 'request of the White House.'"

Ellsberg May Sue Nixon

Dr. Ellsberg and Mr. Russo were jubilant, and members of their families were in tears as the long ordeal, which started with Dr. Ellsberg's arrest on June 25, 1971, ended.

Dr. Ellsberg said that he would file a civil action against former and present high ranking officials of the Government, even perhaps against President Nixon.

"I am convinced by the record of the last couple of weeks, particularly the last couple of days," that the trial should not go on, the judge said.

"Governmental agencies have taken an unprecedented series of actions against these defendants," he said. He cited the special White House "plumbers" unit, which "apparently operated with the approval of the F.B.I."

"We may have been given only a glimpse of what this special unit did," the judge said. "The latest series of actions compound a record already predated by instances which threatened the defendants' rights to a fair trial."

"It was of greatest significance," he said, that the wiretap occurred during the period of conspiracy.

"Continued Government investigation is no solution," he added, "because delays tend to compromise the defendants' rights."

Would Do It Again

Dr. Ellsberg was asked if he was disappointed that the case had not gone to the jury, and he replied, "I think that an American jury would have come to a judgment that is good for this country."

"Tony and I think we know we did something right," he added.

He was asked if he would disclose the Pentagon papers again, and he answered, "I would do it tomorrow, if I could do it."

Leonard B. Boudin, a defense attorney, said:

"I think that the court's ruling was appropriate, necessary, eloquent justified and dispositive. The judgment was made not on the narrow issue of wiretapping, but on the totality of Government misconduct."

Dr. Ellsberg then added that "the trial isn't over until that bombing is over in Cambodia."

"Don't we have the right not

to be tried under Nazi law," he asked. "This Administration has been very straight about where it is. It is up to us to tell them what it means to be an American."

"If facts prove to be what they appear to be, the President has lead a conspiracy, not only against Tony and me, but against the American public."



Associated Press

Mrs. Daniel Ellsberg laughing at a remark her husband made to newsmen outside court in Los Angeles yesterday after the dismissal of the Pentagon papers case.

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Ellsberg Case Is Thrown Out

Judge Blasts Misconduct By Government Aides

By THEO WILSON
 Staff Correspondent of THE NEWS

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 Los Angeles, May 11—The judge at the Pentagon Papers trial dismissed today all charges of espionage, conspiracy, and theft against Daniel Ellsberg and Anthony Russo Jr. because of governmental misconduct, including the activities of the White House "plumbers unit."

United States District Court Judge Matt Byrne Jr. said the defendants' rights to a fair trial had been so violated by a variety of misconduct, including the burglary of Ellsberg's psychiatrist's safe by convicted Water-gate conspirators E. Howard Hunt Jr. and G. Gordon Liddy, that he had to declare a mistrial and dismiss the indictments against them.

He said that the improprieties revealed here in the last two weeks involving Liddy and Hunt as well as other White House officials, were also compounded by the government's defiance of his court orders during the trial itself, which was in its 19th week.

Cheering and applause burst out in the courtroom as soon as Byrne left the bench, and scores of persons in the corridors, who could not get seats, joined in the cheering.

Ellsberg, 42, and Russo, 36, were indicted in 1971 for copying the Pentagon Papers, a secret history of U.S. involvement in Vietnam.

Byrne made it clear that he was not dismissing the case solely because of the Liddy-Hunt burglary, which was authorized in the White House, or for the FBI wiretap on Ellsberg that was disclosed yesterday.

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A Difficult Search

He said his investigation had already revealed such information so much that there was no reason to continue searching, since today indicates further problems as the jury waits.

The judge said that "improper government conduct had been so long shielded from public view" that it would be difficult to discover further violations, and that it would be impossible at this time to determine what other activities of Liddy and Hunt had been directed against Ellsberg.

Earlier today, defense attorneys had said the discovery of the wiretap on Ellsberg was possible evidence of an attempt by Washington to end both the Pentagon Papers trial and the

investigation here which has produced "the most profound Watergate disclosures" and "the involvement of the President in them."

Defense attorneys Leonard Boudin and Leonard Weinglass told Byrne they wanted him to be aware of their suspicions that this might have been a "tactical maneuver" by the government.

A Tricky Maneuver?

Weinglass said the case should be dismissed for many reasons—including the burglary of the office of Ellsberg's psychiatrist by Hunt and Liddy, governmental misconduct before and during the trial, and defiance of court orders by the prosecutor, David Nissen.

"It seems very strange to us," Weinglass said, that the report of the Ellsberg wiretap, which took place in 1969 and 1970, was made only two days after the defense suggested that President

Nixon should be subpoenaed here by Byrne.

[The Justice Department also has reported that the proof of the eavesdropping—tapes or transcripts of Ellsberg's conversations

have mysteriously disappeared from the FBI files. This, said Weinglass, lends further suspicion that the government is attempting to prevent further investigation.]

For more than a year Weinglass reminded Byrne, the court had been told by the government that there was no surveillance of Ellsberg, his co-defendant Anthony Russo Jr., or the defense lawyers or consultants involved in the trial here of charges of conspiracy, espionage, and theft.

"After a year's lapse," Weinglass said, "it is very strange that the FBI is able to come up with some unknown agent who has some recollection that the defendant Ellsberg was overheard . . . only after the court's investigation here in the last 10 days had disclosed very serious wrongdoing on the part of persons in the White House, even reaching to the chief executive."

Boudin told Byrne, "Because of the government's noncompliance with court orders (to reveal wiretaps), our clients will not be given a jury trial," but a dismissal on a legal technicality.

Both defense lawyers have asked to dismiss the case on other grounds, including government misconduct violating the defendants' constitutional rights to a fair trial and unfair "selective prosecution," and they repeated today that they also should be given a dismissal because the wiretapping, despite the suspicions about it.

Sources Not Impeached

Prospector Nissen, arguing a dismissal, said that Byrne should instead hold a hearing at which the government would prove that all of the testimony it presented, and all of the evidence it used, came from "independent" sources which had nothing to do with either the wiretap on the burglary.

Nissen also pointed out that Russo was not even involved in either issue, and, he said, "There is no indication from legal authorities that a dismissal is either a permissible or appropriate remedy."

Nissen told the judge he was not aware of either the burglary

or the wiretap until they were disclosed here, and he said he could prove there was no "taint" on the case because he did not use the "independent" sources that had been obtained from a burglary or wiretap.

The defense attorneys argued that since the FBI cannot now produce any files of the wiretap, nor proof that they were legally obtained, "the presumption must go to the defense, the presumption must be that the wire tap was illegal."

They said that when the government cannot produce records of wiretaps or refuses to disclose them, the cases have been thrown out of court.

Boudin also told the judge he thought the defense should have the right to argue for a judgment of acquittal, but Byrne said the case now was at a point—ready to go to the jury—where he had to "resolve now whether to go forward, or whether it has become, in effect, impossible to continue because of government misconduct" in the burglary and the wiretap.

Byrne's investigation, triggered by the disclosure of the Hunt-Liddy burglary of the office of Ellsberg's psychiatrist — Dr. Lewis Fielding — also has revealed for the first time:

- The secret grand jury testimony of Hunt, naming Egil Krogh Jr. and David Young, who have since resigned, as the bosses of the "plumber's unit" in the White House to which Liddy and Hunt were assigned.

- The burglary was an attempt to get material for a "psychiatric profile" on Ellsberg, then already under indictment, and that the Central Intelligence Agency worked up such a profile, as well as giving disguises and false documentation to Hunt.

- That not only John D. Ehrlichman, then Nixon's chief domestic affairs adviser, but others including Charles W. Colson and John Dean 3d, who formerly served as Nixon's special counsel, had knowledge of the burglary and concealed it when Ellsberg and Russo came to trial here.



Daniel Ellsberg makes statement as wife Pat listens.



Anthony Russo arrives at court for trial session.



Judge Matt Byrne Jr.
Drops all charges

CUSHMAN ACCOUNT

General Says Helms
'Assented' to Aid to
Hunt for Break-InBy MARJORIE HUNTER
Special to The New York Times

WASHINGTON, May 11 — Gen. Robert E. Cushman Jr. said today that Richard Helms, his superior at the Central Intelligence Agency in 1971, had "assented" to agency assistance to E. Howard Hunt Jr., one of the conspirators in the Watergate case.

Mr. Helms, now Ambassador to Iran, was Director of Central Intelligence at the time the agency, in the summer of 1971, provided disguises and equipment to Hunt, upon the request of the White House.

The materials supplied to Hunt were used for the break-in at the office of Dr. Daniel Ellsberg's psychiatrist on Sept. 3, 1971, in Beverly Hills, Calif.

General Cushman, now commandant of the Marine Corps, confirmed today that as Deputy Director of Central Intelligence, he had ordered agency materials made available to Hunt.

But he said that a few days after doing so, he reported his actions to Mr. Helms and "he assented to what I had done."

The general's account of C.I.A. involvement with Hunt was made in a three-page sworn affidavit that he personally presented today to three separate Congressional committees. He cut short a European tour to appear before the committees.

Helms's Rule Widened

His comments about having informed his superior of what he had done would appear to indicate that Mr. Helms was more fully aware of agency involvement in the Watergate and Pentagon papers cases than had previously been suggested.

Earlier this week, current C.I.A. officials disclosed that agency preparation of a personality assessment of Dr. Ellsberg, a defendant in the Pentagon papers trial, had been made with the approval of Mr. Helms.

But, until today, it had been widely assumed that Mr. Helms may have been unaware that General Cushman had agreed to a request by John D. Ehrlichman, at that time a key White House aide, for C.I.A. assistance to Mr. Hunt.

Senator J. W. Fulbright, in a television interview sponsored last night by the National Public Affairs Center, said that Mr. Helms had assured him earlier this spring that the agency had not had anything to do with the Watergate affair.

The Arkansas Democrat said that when Mr. Helms appeared before the committee for confirmation hearings on his appointment as Ambassador, "I asked him specifically during his examination, did the C.I.A. have anything to do with any of this Watergate, and he said not."

It is understood that the secret transcript of the Senate Foreign Relations Committee on the Helms confirmation hearing confirms Senator Fulbright's comment.

Hunt pleaded guilty last Jan. 10 to having taken part in the bugging of Democratic headquarters in the Watergate complex last year. He received a provisional 35-year prison term. The sentence could be reduced later if Hunt is found to have cooperated in the current Watergate investigations. He has also admitted taking part in the office burglary of Dr. Ellsberg's former psychiatrist in Los Angeles.

General Cushman, resplendent in full uniform with row upon row of battle ribbons and a sharpshooter's medal, marched

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from one Congressional committee to another for what turned out to be day-long interrogations.

He appeared first before a House Armed Services Subcommittee, headed by Lucien N. Nedzi, Democrat of Michigan; then before a Senate appropriations subcommittee, headed by John L. McClellan, Democrat of Arkansas; and finally before the Senate Armed Services Committee, of which Stuart Symington, Democrat of Missouri, is temporary chairman.

Domestic Moves Studied

All three committees are inquiring into the issue of whether the C.I.A. exceeded its authority by becoming involved in domestic undercover operations. The agency's charter precludes it from internal security functions.

The committee meetings were closed, but the general's sworn affidavit was made public after each session.

Senator McClellan said that his appropriations subcommittee hoped to hear testimony next week from Mr. Helms, who is in Iran.

Senator Henry M. Jackson, Democrat of Washington, after hearing the Cushman testimony before the Armed Services Com-

mittee, said, "I don't think the C.I.A. violated the law. I think the White House violated the law."

Senator Symington, too, indicated that he believed that the White House request for the agency's assistance was improper.

In his affidavit, General Cushman said that on July 7, 1971, Mr. Ehrlichman called him from the White House and said that Hunt had been made a consultant on security matters. He said that Mr. Ehrlichman asked that the agency give Hunt some assistance.

General Cushman, a military aide to President Nixon, when Mr. Nixon was Vice President, said that he has known Mr. Ehrlichman for 10 or 12 years and respected him highly.

"I also knew that he [Mr. Ehrlichman] was one of the three chiefs of staff, as it were, to the President and that therefore he spoke with the authority of the President's name," General Cushman said.

The general said he was aware that leaks of intelligence information were of great concern within the government at that time and that Mr. Ehrlichman had been named "within the White House as the man in charge of stopping security leaks and overhauling the security regulations."

Orders for Interview

In view of that, the general continued, he concluded that Hunt had been hired by the White House to act in the security field and that the C.I.A. was being ordered to assist him.

He said that Hunt appeared in his office on July 22, 1971, and said that he had "a very sensitive one-time interview that the White House wanted him to hold" but that he dared not reveal his identity.

General Cushman also noted that Hunt was "a highly respected and honorably retired C.I.A. employee of 20 years' service."

The general said that he was unable to discover any details of the plan. He said Hunt told him that he was under White House orders not to reveal the nature or scope of the planned interview and not to reveal the fact that he even worked for the White House.

"He did assure me, however," the general said, "that he was working to be a good purpose in the interests of the country."

About a month after giving Hunt a wig and other disguise materials and various equipment and alias identification papers, the general said, he found that Hunt "was becoming more and more unreasonable and demanding" and going far beyond what seemed necessary for "a one-time interview."

At that point, the general said, he stopped "all relationships" with Hunt and so informed Mr. Ehrlichman.

He said he also told Mr. Ehrlichman "that in my opinion, Mr. Hunt was of questionable judgment" and with that left Mr. Ehrlichman to do "as he deemed proper."



Associated Press

E. Howard Hunt Jr.



Associated Press

James R. Schlesinger, left, Director of Central Intelligence and Defense Secretary-designate; Stuart Symington, center, acting chairman of the Senate Armed Services

Committee, and Gen. Robert E. Cushman Jr., Marine Corps commandant and former Deputy Director of C.I.A., before closed-door session in Washington yesterday.

Federal Conduct Cited as Offending 'Sense of Justice'

By Sanford J. Ungar
Washington Post Staff Writer

LOS ANGELES, May 11—U.S. District Court Judge W. Mark Byrne Jr., citing governmental misconduct so severe as to "offend the sense of justice," ended the Pentagon Papers trial of Daniel Ellsberg and Anthony Russo Jr. today and dismissed all criminal charges against them.

After two weeks of sensational disclosures, including news of a White House-directed burglary of Ellsberg's psychiatrist's office and of government wiretaps for which all records have disappeared, Byrne said. "There remain more questions than answers" about how seriously the defendants' constitutional rights were violated.

The judge blamed various government agencies, including the Central Intelligence Agency, for taking "an unprecedented series of actions" against Ellsberg after he was originally indicted almost two years ago for leaking the Pentagon Papers.

But Byrne said his ruling was also based on the fact that government prosecutors had "time and again failed" to comply with his court orders to produce materials from government files that tended to exculpate, or establish the innocence of, Ellsberg and Russo.

He declared that they "should not have to run the risk of being tried again before another jury."

Byrne's ruling, which took 15 minutes for him to read from the bench this afternoon, brought pandemonium in his courtroom. As he strode back to his chambers, there was applause and whoops of joy from Ellsberg's and Russo's staff and supporters.

There was also discreet pleasure at the Justice Department in Washington, where high officials had come to believe that the Pentagon Papers trial, while important to President Nixon's effort to stem leaks of "national security information" from the federal bureaucracy, was hopelessly entangled with the Watergate affair.

Specifically, Byrne granted both a mistrial and a dismissal of the indictment which charged Ellsberg and Russo with conspiracy, espionage and theft of government property. He said he had determined that to grant a mistrial alone, leaving open the possibility for a new trial, "would not be fair."

The only way that the Justice Department could now move to retry Ellsberg and Russo on the charges here would be to appeal Byrne's decision on dismissal to the Ninth U.S. Circuit Court of Appeals in San Francisco, which it is entitled to do.

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Mr. Kinley _____
Mr. Armstrong _____
Mr. Bowers _____
Mr. Herington _____
Ms. Herwig _____
Mr. Mintz _____
Mrs. Neenan _____

W. Marshall
W. J. [unclear]

But legal observers pointed out that such an appeal is unlikely to be taken—and that it would probably not succeed—because Ellsberg and Russo had already been placed in "jeopardy" of conviction on the offenses charged.

The Fifth Amendment to the Constitution dictates that no person "shall . . . be subject for the same offense to be twice put in jeopardy of life or limb. . . ."

Unlike an occasion last year when a mistrial was declared in the Pentagon Papers case, Ellsberg and Russo did not seek a mistrial this time, nor did they file a "waiver" of their rights against "double jeopardy."

Whatever the strict legal posture of the situation, Justice Department sources said that as long as Richard G. Kleindienst remains Attorney General—he has resigned from the Cabinet because people close to him are under investigation in the Watergate affair—Byrne's decision certainly will not be appealed.

But the sources stressed that the final decision will be up to Attorney General-designate Elliot L. Richardson, whose nomination is before the Senate Judiciary Committee, on the basis of advice from Solicitor General Erwin N. Griswold.

It was uncertain, however, whether the Justice Department would renew a separate grand jury investigation in Boston, suspended since last December, which focused on Ellsberg's distribution of the Pentagon Papers to The

See PAPERS, A14, Col. 7

Pandemonium reigns in courtroom

Page A14

Charges Dismissed In 'Papers' Trial

PAPERS. From A1

New York Times, The Washington Post and other newspapers.

The charges here focused only on Ellsberg and Russo's actions in late 1969, when they photocopied the top-secret Pentagon study at a Hollywood advertising agency, and their "conspiracy" which the government said continued into late 1970.

A jury of 10 women and two men had been hearing the evidence against Ellsberg and Russo and in their defense since mid-January.

The jurors were sent home for a week last Tuesday, while Byrne weighed the tangle of disclosures concerning the government's investigations of Ellsberg. This afternoon, they were notified by telephone that they would not have to bother returning to court next week.

Attorneys on both sides of the case had already expressed their misgivings that the jury, which was not sequestered, had been insulated from information about the recent sensational developments.

The Ellsberg-Russo defense fought to the last moment for a ruling from Byrne on its motion for a directed verdict of acquittal based on the assertion that the government's evidence was insufficient to sustain a conviction.

Russo, for his own part, repeatedly instructed his attorney Leonard I. Weinglass, that he wanted the case to go to the jury in order to vindicate his and Ellsberg's conduct in releasing to the public the secret history of American involvement in Southeast Asia.

Before Judge Byrne dismissed the case this afternoon, he indicated that if he were to rule on the motion for a directed verdict of acquittal, he would acquit the defendants on some counts, but send other counts to the jury for a verdict.

He gave the defendants time to consult with their attorneys on whether they wanted to have him follow that course or rule on the dismissal motion.

After a moment, chief defense counsel Leonard B. Boudin said, "The defendants do press their motion, based on the totality of government misconduct." It was then that Byrne delivered his ruling.

While scolding the prosecution generally, the judge seemed to indicate that he viewed most seriously the revelation on Thursday that Ellsberg had been overheard in late 1969 and early 1970 in a wiretap on the Bethesda, Md., residence of Morton H. Halperin, then a consultant to the National Security Council and more recently "chief of staff" for the Ellsberg-Russo defense.

"Of greatest significance," Byrne said, was the discovery that the Justice Department and Federal Bureau of Investigation had lost or destroyed records of the wiretap on Halperin.

Although pressed repeatedly by Byrne over the past two days, chief prosecutor David R. Nissen had been unable to come up with more details on the wiretap or the missing records. This afternoon, the judge said he was willing to wait no longer.

At other times during the past two weeks, it had been disclosed that:

- A burglary squad reporting directly to the White House broke into the Beverly Hills office of Ellsberg's psychiatrist, Dr. Lewis Fielding, as part of a scheme to determine Ellsberg's "prosecutability."

- The Central Intelligence Agency, it possibly indicated, of its legal authority, provided technical assistance to the burglars over a five-week period.

- The entire operation grew out of President Nixon's personal directive for an urgent investigation—outside the normal channels of the FBI—to identify the sources of leaks of "national security information."

- Convicted Watergate conspirator E. Howard Hunt Jr., a member of that operation, forged two official State Department cables to implicate the late President Kennedy in the 1963 assassination of South Vietnam President Ngo Dinh Diem.

- Byrne was approached in the midst of the Pentagon Papers trial by former chief White House adviser John D. Ehrlichman about accepting the permanent directorship of the FBI.

During a court session this morning, defense attorneys for Ellsberg and Russo made a concededly half-hearted argument for dismissal of the case.

Boudin and Weinglass asserted that legal precedent supports a dismissal when the government has failed to produce the logs and other records of a wiretap.

"The government has engaged in an act whose legality it cannot even seek to establish," Boudin told the judge.

"The government has destroyed the records or made them disappear."

Referring to allegations that records of "national security" electronic surveillances were removed from the FBI's files in 1971, Boudin said, "It makes no difference whether it was the White House, the Justice Department or the FBI" which conducted the wiretap that overheard Ellsberg—"although, apparently, one was subject to robbery by the other."

Weinglass contended that once any records of the wiretap were produced, the defense is legally entitled to inspect them and help in the court's determination of whether the surveillance was related to the case and had "tainted" the prosecution evidence.

On the contrary, argued chief prosecutor Nissen, the government should have the opportunity to demonstrate that it had an "independent origin" for all of its evidence.

But the thrust of defense arguments today was an appeal that Byrne not conclude the controversial case without first mounting a full investigation of the wiretap and other "governmental misconduct" and settling the complex legal issues involved by acquitting Ellsberg and Russo of all charges.

Weinglass suggested that Ruckelshaus's last-minute discovery of an FBI employee who remembered that Ellsberg had been overheard in a wiretap was "a White House attempt to divert the court" from more embarrassing disclosures.

"It is very possible," he argued, that "this (FBI) agent is a person assisting the government to get out from a very uncomfortable situation."

Pandemonium Reigns At Ellsberg Dismissal

By Leroy F. Aaron

Washington Post Staff Writer

LOS ANGELES, May 11—
"The only remedy," Judge
W. Matt Byrne Jr. was con-
cluding, and already the
wave of cheers began. "...
is that this trial..." specta-
tors climbed onto the
benches, "... be termi-
nated."

Pandemonium.

There was a rush for the
defense table. People began
hugging each other. Defense
attorney Charles Nesson im-
mediately lit a huge cigar.
Daniel Ellsberg, beaming,
reached for his wife. People
waiting in the corridor, who
had not been able to get in,
burst through the doors

even as Judge Byrne w-
murmuring "thank you" to
the attorneys and leaving
the bench.

A photographer tried to
snap the Ellsberg embrace,
but it was still technically a
trial in progress, and mar-
shals descended.

That was the only sour
note for the openly partisan
crowd. Reporters who had
been covering the case for
two years shook the hands
of Ellsberg and his co-de-
fendant, Anthony J. Russo
Jr., resplendent in red-and-
white tie and blue shirt.
Others hugged Patricia
Marx Ellsberg and Russo's
wife, Katherine Barkley.

The prosecutors slipped

out almost unnoticed.
"What's your reaction?" a
reporter asked assistant
prosecutor Warren P. Reese.

"No comment," he said.

"Is there an appeal
possible?"

"No. It's over. It's dead."

For the winners it was
very much alive.

"We did it! We did it!"
cried Pat Ellsberg, handing
an Isaac Bashevis Singer
novel to a friend and run-
ning a brush through her
hair to get ready for the TV
cameras. "There'll be par-
ties tonight."

Now the hallway was fill-
ing with people, carrying
Ellsberg, Russo and the
three defense attorneys Nes-
son, Leonard Boudin and
Leonard Weinglass along al-
most by force.

Russo reached a hand out
to a building guard. "Hey
Oscar," he called, "Don't the
people own the courthouse
now?"

Outside, on the court-
house steps, they were
greeted by a horde of re-
porters, well-wishers and TV
cameramen, booms and
wires crossing like a Ben
Shawn line drawing.

"This was the right way to
end it," said Ellsberg, his
slender figure almost swal-
lowed by the crowd. Clad in
an academically proper blue
tweed sport coat and rep tie,
he might have been an-
nouncing final grades for
the semester. "It should
have been ended. It was the
government that cheated
the jury out of its right to
hear the evidence."

There was more small
talk, then Ellsberg an-
nounced his intention to sue
for damages against those
"conspirators" who had
caused all the trouble. "The
President led the conspiracy
— not only against Tony
and me, but the entire na-
tion."

Mr. Felt _____
Mr. Baker _____
Mr. Callahan _____
Mr. Cleveland _____
Mr. Conrad _____
Mr. Gebhardt _____
Mr. Jenkins _____
Mr. Marshall _____
Mr. Miller, E. S. _____
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The Washington Post
Times Herald

The Evening Star (Washington) —

The Sunday Star (Washington) —

Daily News (New York) —

Sunday News (New York) —

New York Post —

The New York Times —

The Daily World —

The New Leader —

The Wall Street Journal —

The National Observer —

People's World —

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Off to the side, Leonard Boudin stood alone, remarkably. The man who had won for Dr. Benjamin Spock, for the Harrisburg, now, with the government's help, for Ellsberg, and Russo was asked what he would do now.

White-haired, slightly bent, 60 years old, he was taking the excitement tranquilly. "Well, it's all over, the end of two years of work. We'll be cleaning up here for about five days, seeing friends I've been meaning to see for about a year, and taking a look at Los Angeles. Then, I guess, a week's vacation and back to work."

The crowd was thinning out now. "This puts the final cap on the bankruptcy of the Nixon administration," someone exulted.

"We won't have Nixon to kick around much longer," said another.

They were down on the courthouse plaza, now, the defendants and their lawyers and a few reporters. Tony Russo noticed a special edition of The Los Angeles Times in a newspaper vending rack. The banner read: "Ellsberg Case Dismissed."

Russo plugged in a dime, opened the rack, pulled out a handful of newspapers and passed them around.

JUDGE DENOUNCES

GOVERNMENT MISCONDUCT

Watergate Taint
Frees Ellsberg

BY OSWALD JOHNSTON

Star-News Staff Writer

The Nixon administration's prosecution of those who leaked the Pentagon Papers, once a matter of high priority, lies in ruin today, hopelessly tainted by the Watergate scandal and thrown out of court because of government misconduct.

Justice Department officials, surveying the wreckage of their case against Daniel Ellsberg and Anthony Russo for copying and distributing the top-secret study of U.S. Vietnam policy, are virtually certain they have been left little chance of winning on appeal.

U.S. District Judge W. Matt Byrne Jr., by declaring a mistrial in the case and explicitly dismissing all charges yesterday, appears to have made all but futile any attempt to seek to try Ellsberg and Russo anew on charges of espionage, theft and conspiracy.

Byrne made it clear he was punishing the government for the way it had handled prosecution of the case and for misconduct on a scale that he implied had verged on criminal behavior.

"The conduct of the government has placed this case in such a posture it precludes the fair and dispassionate consideration of issues by the jury," Byrne said in a statement issued as he ended the five-months-long trial in Los Angeles.

THAT CONDUCT, in particular, culminated in revelations of recent weeks linking administration operatives convicted in the Watergate trial with a burglary at the Los Angeles office of Ellsberg's psychiatrist. The burglary was planned under supervision of White House aides, affidavits filed in the case have shown.

It appeared today that the burglary could lead to a state criminal case against former White House aides involved with the planning. United Press International said a team of Los Angeles County prosecutors, which has been in Washington gathering data on the case, was reported to be concentrating on the "big fish" who authorized the burglary, not those who carried it out.

Documents filed in the Los Angeles court have identified ex-White House aides John Ehrlichman and Egil Krogh as the men who directed a special White House investigation of Ellsberg which led to the burglary. A grand jury is scheduled to sit in Los Angeles June 5-8, and Krogh reportedly has agreed to testify.

JUDGE BYRNE, reading a prepared statement at the close of the case yesterday, made it plain that he was dismissing the case not only because of a recent disclosure of a previously unreported electronic surveillance of Ellsberg, not because of "bizarre events" over the past few weeks and "information that has been presented in the last several days."

See ELLSBERG, Page A-3

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Mr. Baker _____
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Mr. Cleveland _____
Mr. Conrad _____
Mr. Gebhardt _____
Mr. Jenkins _____

Papers Case Dismissed

Continued From Page A-1

He indicated that the spectacular failure of the case was entirely the government's doing, particularly as a result of the interweaving in recent weeks of the widening Watergate scandal with the administration's handling of the Pentagon Papers case.

Judge Byrne's ruling technically left the government's case against Ellsberg and Russo in limbo. It left the government free to re-try the case. However, legal observers indicated such an appeal was unlikely and that it did not have much chance of succeeding.

THE JUSTICE Department had no comment on the ruling. Similarly, a White House spokesman at Camp David, Md., where President Nixon has gone to spend the weekend, declined comment.

The courtroom in Los Angeles erupted with cheering and applause as Judge Byrne denounced the case as one that had "offended a sense of justice" because of "government conduct shielded so long from public view." He said he thought the two men "should not have to risk the possibility that they might be tried again."

Afterward, Ellsberg told reporters: "I feel this trial should never have been brought." The man who has admitted that he leaked the Pentagon Papers to the press said that he "would do it tomorrow if it needed doing." Russo said that the government had engaged in a conspiracy "to violate our civil rights."

The Associated Press reported that a survey of the jurors showed that a majority of them were leaning toward the defense side of the case. Ten members of the 12-member jury were reached, the AP said. Five said they probably would have voted for an acquittal, two said they were leaning toward the defense, and three would not say.

The end of the case brought an irony for Judge Byrne: it seemed to free him to accept nomination by President Nixon as the next FBI director—if the offer remains open and if he is interested. Such an offer was made to him by former White House aide Ehrlichman during the trial. Disclosure of that was one of the recent revelations which rocked the case.

HUNT'S TESTIMONY to the grand jury was revealed at the trial May 4, and it was explosive. Not only did it underscore White House knowledge of the break-in, through Ehrlichman aide Krogh, but it revealed that the break-in team was given a camera, disguises and false documents by the CIA.

Three days later it was first disclosed in the New York Times and later confirmed by CIA director James R. Schlesinger that the support given the Hunt-Liddy team had been authorized by Marine Gen. Robert E. Cushman Jr., a former Nixon aide who in 1971 was deputy director of CIA. Cushman, it was revealed, had been telephoned by Ehrlichman and asked to help Hunt.

Lurking beneath the surface of these spectacular revelations was the nagging question of why the prosecutors had taken so

long in admitting facts which could have tainted their case. The White House sought to deny reports Nixon himself had resisted disclosing the Hunt-Liddy break-in.

Only this week, an FBI deposition made public at the trial revealed that former White House special counsel Charles W. Colson had been aware of the burglary but had been told by the CIA and the FBI not to disclose it. Federal investigators probing the Watergate case.

DURING THE last few weeks of the trial, the Los Angeles courtroom became the site of almost daily revelations of asserted government misconduct, many directly involving figures already tied to the Watergate case.

By today, the casual observer in the courtroom might have thought it was the government, and not Ellsberg and Russo, that was on trial. Toward the end, Pentagon Papers and Watergate became almost synonymous as symbols of administration complicity in illegal actions.

The revelations that engulfed the government case against Ellsberg and Russo began with the disclosure April 27 that Watergate conspirators E. Howard Hunt Jr. and G. Gordon Liddy were responsible for the break-in at the office of a psychiatrist who once treated Ellsberg.

On that day, the Watergate case already had broken wide open, and President Nixon was struggling with his decision to clear his White House staff of such formerly trusted aides as John D. Ehrlichman, H. R. Haldeman and John W. Dean III and accept the resignation of Atty. Gen. Richard G. Kleindienst.

ON APRIL 30, the same day Nixon purged the White House staff and went to the nation with his televised speech on the Watergate scandal, The Star-News reported that Nixon late in March had met briefly with Byrne, the judge in the trial, about the FBI director's job.

If anything doomed the government's case, it was probably that revelation—confirmed by the judge—in the context of the Hunt-Liddy break-in disclosure and the widening Watergate scandal. From then on, Byrne was uncompromising in his declaration that the burden was on the government to prove its hands were clean.

Within two days, Byrne confirmed publicly that the FBI directorship had been discussed twice with Ehrlichman. At the same time, Hunt was telling a grand jury that the burglary was ordered by an Ehrlichman aide, Egil Krogh Jr.

Moreover, in an FBI report revealed at the trial, Ehrlichman admitted to government investigators that he had been told about the burglary afterward and that it had taken place in the course of a covert probe of the Pentagon Papers defendant directed from the White House during 1971.

In early February, Byrne punished the government for this behavior by eliminating one of the espionage charges against Ellsberg. Later, after the prosecution rested its

two more espionage charges against Ellsberg and Russo were dismissed for lack of evidence.

And as the defense opened its case, another accusation of government misconduct was lodged. The accuser was Samuel A. Adams, a CIA analyst whose testimony contradicted the claim of a person who testified that 1971 disclosure of the Pentagon Papers stemmed from the CIA.

Adams said he had been asked by government prosecutors to prevent him from testifying for the defense and tried to keep a memo he wrote on the subject out of the judge's hands. "There was a definite attempt by the government to keep me from testifying in this court," Adams said after he appeared as a witness.

But all these earlier disclosures of government maneuvering in the trial were overshadowed by the disclosures in recent weeks—disclosures that finally revealed the prosecution case tainted beyond repair.

COLSON'S DISCLOSURE was largely overshadowed by yesterday's disclosure of additional government wiretapping in 1969 and 1970 in which telephone calls made by Ellsberg were overheard.

It was this revelation that finally proved fatal to the government's case and provoked Byrne to assert once again that the burden of proof of innocence was on the government.

"Tell Mr. (Henry) Petersen (assistant attorney general in charge of the criminal division) that I want the information now," he ordered David R. Nissen, the government prosecutor, demanding answers to a list of questions about the wiretaps.

"Do they (the Justice Department) understand that I want that now—not at the completion of some investigation?"

"If there are no logs and records (of the wiretaps), I want to know why not. If there were, and they are

gone, I want to know why and where."

EVEN WITHOUT the tumultuous revelation of recent weeks, Byrne had ample reason to press the government to prove its good faith in prosecuting Ellsberg and Russo.

It was just a year ago, May 1, 1971, that Byrne first ordered the prosecution to disclose a government wiretap in the case. The disclosure came in the form of a statement filed in the trial, and another wiretap was revealed in December.

Then, when the trial finally got under way in January, the prosecution was caught in a series of actions aimed at suppressing information that could have aided the defense.

First, it was revealed that the Defense Department had made secret studies showing publication of some of the Pentagon Papers did not affect national defense. Testimony revealed that J. Fred Euzherdt, legal counsel now named as Nixon's special counsel for Watergate affairs, may have been involved in in-house orders to destroy these materials.

Handwritten initials
 Mr. Bell ☒
 Mr. Baker _____
 Mr. Callahan _____
 Mr. Cleveland _____
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 Mrs. Neenan _____
Mr. Corry

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BY OSWALD JOHNSTON

Star-News Staff Writer

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 The Daily World _____
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 The Wall Street Journal _____
 The National Observer _____
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He indicated that the spectacular failure of the case was entirely the government's doing, particularly as a result of the interweaving in recent weeks of the widening Watergate scandal with the administration's handling of the Pentagon Papers case.

Judge Byrne's ruling technically left the government a right to appeal to the 9th U.S. Court of Appeals in an attempt to revive the case. However, legal observers indicated such an appeal was unlikely, and that, if filed, it did not have much chance of succeeding.

THE JUSTICE Department had no comment on the ruling. Similarly, a White House spokesman at Camp David, Md., where President Nixon has gone to spend the weekend, declined comment.

Assistant U.S. Attorney Warren Reese, asked by a newsman if the government would appeal the dismissal, replied, "No. This case is dead."

Ellsberg said he planned to file a civil suit charging the government with bad faith prosecution and invasion of privacy. He said he hoped to force the government to reimburse him for the expense of defending himself, estimated at \$1 million. Ellsberg said he plans to sue Nixon for "conspiracy to deprive us of our civil liberties."

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In early February, Byrne punished the government for this behavior by eliminating one of the espionage charges against Ellsberg. Later, after the prosecution rested its case, two more espionage counts against Ellsberg and Russo were dismissed for lack of evidence.



Anthony Russo (left) and Daniel Ellsberg, along with their happy wives, talk with reporters.

—Associated Press

CIA Official Felt Aide Spoke for Nixon

By Laurence Stern
Washington Post Staff Writer

Gen. Robert H. Cushman Jr. said yesterday he assumed it was on President Nixon's behalf that former White House aide John D. Ehrlichman asked him to give Central Intelligence Agency undercover assistance to Watergate conspirator E. Howard Hunt.

The CIA paraphernalia—cameras, hidden tape recorders and wigs—was later used by Hunt in the burglary of Pentagon Papers defendant Daniel Ellsberg's psychiatrist, Dr. Lewis Fielding of Beverly Hills, in September, 1971.

Cushman, who was the CIA's deputy director at the time, said that when Ehrlichman called him and requested the aid for Hunt, "I knew that he . . . spoke with the authority of the President's name."

"I had known Mr. Ehrlichman for a good 10 to 12 years and respected him highly as a man of complete honesty and devotion to duty," the four-star Marine general said of the former Presidential aide.

Cushman, who now serves as Marine Corps commandant, interrupted a European tour to present his testimony to a Senate Appropriations Subcommittee on intelligence.

Afterward, subcommittee chairman John L. McClellan (D-Ark.) commented to newsmen: "I don't think he (Cushman) would do it again."

Cushman gave this explanation of how a White House call in July, 1971, triggered immediate and extraordinary cooperation from the CIA.

"Ehrlichman had been named within the White House as the man in charge of stopping security leaks and over-hauling the security regulations. The Central Intelligence Agency is charged with safeguarding intelligence sources and methods.

"From these facts, I then drew the conclusion which I believe any reasonable man would have reached, namely that Howard Hunt had been hired by the White House to act in the security field and that the Central Intelligence Agency was being ordered to assist him," Cushman asserted.

Outgoing CIA director James R. Schelesinger has condemned the assistance to

Hunt, provided before he assumed control of the agency from Richard M. Helms, as "ill-advised."

Immediate senatorial reaction was that although the CIA assistance to Hunt was improper, the fault lay with Ehrlichman, who resigned under fire two weeks ago from his job as President Nixon's domestic counselor.

"When a man is in the position of Ehrlichman, the first deputy to the commander-in-chief," said Sen. Stuart Symington (D-Mo.), acting Armed Services Committee chairman, "there are not many military officers who would not jump."

Under the CIA's charter, the National Security Act of 1947, the CIA is proscribed from dealing with any internal security matters. That is the province of the FBI.

Cushman said that when Hunt called upon him on July 22, 1974, he "stated that he had a very sensitive one-time interview that the White House wanted him to hold with a person whose ideology he was not sure of and that he dare not reveal his, Hunt's, true identity."

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He noted that "I must be recalled that ~~Mr.~~ Howard Hunt was a highly respected and ~~honorable~~ former CIA employee of 20 years' service."

Nonetheless, said Cushman, White House wanted him to "I was not able to elicit any details of the interview which he stated that he had

to conduct and he said that on White House orders he was not to reveal the nature and scope of this interview nor the fact that he worked for the White House.

"He did assure me, however, that he was working to a good purpose in the interests of the country."

After the spy gear was issued to Hunt by the CIA's Technical Services Division, Cushman reported the matter to then-director Helms, according to his affidavit.

The decision to cut off the aid came, he said, because "Mr. Hunt was becoming more and more unreasonable and demanding and was attempting to go far beyond the scope of the original instructions which I had given and which related to his statement that he had a one-time interview operation to conduct."

He ordered all relationships with Hunt discontinued, Cushman related, and informed Ehrlichman on August 27, 1971, that the assistance could be construed as improper for the CIA.

"I also advised him (Ehrlichman) that in my opinion Mr. Hunt was of questionable judgment. He should know better than to ask for such support," Cushman asserted. "Therefore, I made this recommendation to Mr. Ehrlichman for him to do with as he deemed proper."



By Ken Felt—The Washington Post

CIA chief James R. Schlesinger, with Marine Corps head Robert H. Cushman Jr.

How Hawk Ellsberg Turned Into Activist Dove

By THEO WILSON
Staff Correspondent of THE NEWS

Los Angeles, May 11—The name of Daniel Ellsberg, a former Defense Department "hawk" who did research work on government projects for the Rand Corp., popped into the newspapers only a few days after the publication of the Pentagon Papers began on June 13, 1971.

The revelations from the "top-secret" documents, a history of the United States' involvement in Vietnam between 1945 and 1968 ordered by former Defense Secretary Robert McNamara, were overshadowed by a search for the man who had "leaked" them and by an unsuccessful government attempt to stop further newspaper publication.

Case Goes to Los Angeles

On June 28, 1971, Ellsberg surrendered in Boston, after a warrant was issued charging him with illegal possession. He admitted he made the documents available in an attempt to end the war.

Because the Rand Corp., a private "think tank" where the papers were stored, was in Santa Monica nearby, a Los Angeles County grand jury took jurisdiction, and indicted Ellsberg for "unauthorized possession" of classified government documents which he had "converted to his own use," also on June 28.

On Dec. 29, 1971, the grand jury returned a superseding indictment against Ellsberg and Anthony Russo Jr., another former Rand employee, charging both men with violations of federal espionage, conspiracy, and theft laws.

Russo, a friend of Ellsberg who was then working for the Los Angeles County Probation Department, became involved in the case when he refused to testify before the grand jury, although he was offered immunity. He was jailed for contempt.

After 47 days in jail, on Oct. 1, 1971, Russo was released by a federal judge who ordered the government to give Russo a

transcript of his grand-jury testimony within 36 hours after he testified. Russo had said he would not participate in a "secret" hearing.

Wiretapping Issue

Russo appeared at the grand-jury proceedings, ready to testify, on Oct. 18, but the government prosecutor refused to obey the court order, claiming it was "not valid," and Russo again refused to be questioned. A month later, the Federal Court held that Russo did not have to testify at all because of the prosecutor's refusal to comply with the court order to release the transcript. Russo was never again called to testify.

Instead, he was named a co-conspirator with Ellsberg in the December indictment. Both men were released on bond.

After lengthy pretrial arguments before U.S. District Court

Judge Matt Byrne Jr. in Los Angeles, the trial started on July 10, 1972; and 11 days later, 12 jurors were sworn. On the same day, July 21, the government filed a secret affidavit with Byrne, revealing that a member of the defense, either a lawyer or consultant, had been "inadvertently" overheard in a telephone conversation with a third party who was under wiretapping surveillance. The judge refused to reveal any details, ruling that the wiretapping conversation did not in any way involve the trial or the defendants.

Overruling defense motions for a hearing on the wiretap, Byrne completed the jury with six alternates, and scheduled opening arguments for July 26; but only a few hours before the trial session was to start, the defense won a stay from the 9th Circuit Court of Appeals.

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... fight went to the U.S. Supreme Court, which ... the stay on Aug. 5 Judge Byrne suspended the trial, telling the jurors they were still sworn in. It was not until Nov. 12 that

the Supreme Court took action. It refused to hear the case, and the trial was ordered resumed.

The defense, however, argued that a mistrial should be declared and a new jury sworn in. Judge Byrne refused, and the matter was appealed to the 9th Circuit, which denied the defense motion but advised it would be "foolish" to continue with the case with a jury which had been under oath, but not sequestered, for so many months.

Byrne took the hint, declared a mistrial on Dec. 11, and a new jury was sworn on Jan. 16, 1973.

During the case, prosecutor David Nissen called 26 witnesses, 16 of them on rebuttal, to tell the jurors that Ellsberg and Russo had jeopardized America's national defense when they copied the documents in 1969 on a Xerox machine in an advertising office in Los Angeles.

(The defendants were not charged for leaking the information in 1971, and at no time during the trial were the newspaper publications of the documents in that year allowed to become an issue.)

The defense called 28 witnesses, among them such political celebrities of the Kennedy administration as John Kenneth Galbraith, McGeorge Bundy, Arthur M. Schlesinger Jr., and Theodore Sorensen. They said the information in the documents was so "stale" by 1969 that it could not have aided the enemy.

No Conspiracy, They Say

Ellsberg and Russo also testified, claiming there was no conspiracy because they did not discuss the papers or decide to copy them until the very day it started, Oct. 4, 1969. Ellsberg told the jurors he did not steal the documents, since he had "top secret" security and was authorized to use them. He said he copied them to give to Sen. J. William Fulbright (D-Ark.), the chairman of the Foreign Relations Committee.

Judge Byrne prevented repeated attempts by witnesses to tell the jurors that the release of the documents would have been of advantage to the American people, by revealing to them they had been "misled" by the government about the war. He said the issue under the espionage

charges was only whether the release could have helped the national defense or have been of advantage to the enemy.

Burglary Disclosed

During the government's rebuttal case, Judge Byrne revealed on April 27 that he had information from the Justice Department that convicted Watergate conspirators E. Howard Hunt Jr. and G. Gordon Liddy had also burglarized the office of Dr. Lewis Ellsberg's former psychiatrist, on Sept. 2, 1971—when Ellsberg was already under indictment.

Byrne immediately ordered a government investigation, and the burglary was confirmed by statements released here from Hunt; his boss, Egil Krogh Jr., who resigned during the investigation; and John D. Ehrlichman, who resigned two days after he admitted his knowledge of the burglary to the FBI.

Ehrlichman was President Nixon's chief adviser on domestic affairs; Krogh was Ehrlichman's assistant.

White House Role

The investigation also revealed that the burglary occurred after President Nixon personally ordered Ehrlichman to begin an "independent" White House investigation into the case, although the FBI and the Justice Department

were conducting the investigation and the criminal prosecution.

The investigation also revealed for the first time, among other things, that former Presidential Counsel Charles W. Colson authorized Hunt to falsify and leak phony cable messages connecting President John F. Kennedy with the assassination of South Vietnamese President Ngo Dinh Diem in November 1963; that Ehrlichman had knowledge of the burglary in Los Angeles before Ellsberg and Russo came to trial; and that Krogh, in a lengthy statement released here, described why the Hunt-Liddy unit was formed, resulting not only in the Ellsberg burglary but in the Watergate bugging.

Down to Only 105 Years

When their trial started, Ellsberg and Russo faced a total of 150 years in prison and \$160,000 in fines, if convicted. But because of the prosecutor's attempted concealment of evidence in defiance of court orders, Judge Byrne imposed sanctions, dropping one espionage count each against the defendants.

The sanctions reduced Ellsberg's possible 115-year sentence to 105 years, and Russo's possible 35-year sentence to 25 years. They also knocked off \$10,000 from the possible fines which could be im-

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Judge Dismisses All Charges In Case Against Ellsberg, Russo

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Federal Conduct Cited as Offending 'Sense of Justice'

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By Sanford J. Ungar
Washington Post Staff Writer

LOS ANGELES, May 11—U.S. District Court Judge W. Matt Byrne Jr., citing governmental misconduct so severe as to "offend the sense of justice," ended the Pentagon Papers trial of Daniel Ellsberg and Anthony Russo Jr. today and dismissed all criminal charges against them.

After two weeks of sensational disclosures, including news of a White House-directed burglary of Ellsberg's psychiatrist's office and of government wiretaps for which all records have disappeared, Byrne said, "there remain more questions than answers" about how seriously the defendants' constitutional rights were violated.

The judge blamed various government agencies, including the Central Intelligence Agency, for taking "an unprecedented series of actions" against Ellsberg after he was originally indicted almost two years ago for leaking the Pentagon Papers.

But Byrne said his ruling was also based on the fact that government prosecutors had "time and again failed" to comply with his court orders to produce materials from government files that tended to exculpate, or establish the innocence of, Ellsberg and Russo.

He declared that they "should not have to run the risk of being tried again before another jury."

"No investigation," Byrne said, "is likely to provide satisfactory answers where improper government conduct has been shielded so long from public view and where the government advises the court that pertinent files and records are missing or destroyed. My duties and obligations relate to this case and what must be done to protect the right to a fair trial."

Byrne's ruling, which took 15 minutes for him to read from the bench this afternoon, brought pandemonium in his courtroom. As he strode back to his chambers, there was applause and whoops of joy from Ellsberg's and Russo's staff and supporters.

There was also discreet pleasure at the Justice Department in Washington, where high officials had come to believe that the Pentagon Papers trial, while important to President Nixon's effort to stem leaks of "national security information" from the federal bureaucracy, was hopelessly entangled with the Watergate affair.

Specifically, Byrne granted both a mistrial and a dismissal of the indictment which charged Ellsberg and Russo with conspiracy, espionage and theft of government property. He said he had determined that to grant a mistrial alone, leaving open the possibility for a new trial, "would not be fair."

The only way that the Justice Department could move to retry Ellsberg and Russo on the charges now would be to appeal Byrne's decision on Monday to the Ninth U.S. Circuit Court of Appeals in San Francisco, which it is entitled to do.

But legal observers pointed out that such an appeal is unlikely to be taken—and that it would probably not succeed—because Ellsberg and Russo had already been placed in "jeopardy" of conviction on the offenses charged.

The Fifth Amendment to the Constitution dictates that no person "shall . . . be subject for the same offense to be twice put in jeopardy of life or limb."

Unlike an occasion last year when a mistrial was declared in the Pentagon Papers case, Ellsberg and Russo did not seek a mistrial this time, nor did they file a "waiver" of their rights against "double jeopardy."

Whatever the strict legal posture of the situation, Justice Department sources said that as long as Richard G. Kleindienst remains Attorney General—he has resigned from the Cabinet because people close to him are under investigation in the Watergate affair—Byrne's decision certainly will not be appealed.

But the sources stressed that the final decision will be up to Attorney General-designate Elliot L. Richardson,

whose nomination is before the Senate Judiciary Committee, on the basis of advice from Solicitor General Erwin N. Griswold.

It was uncertain, however, whether the Justice Department would renew a separate grand jury investigation in Boston, suspended since last December, which focused on Ellsberg's distribution of the Pentagon Papers to The New York Times, The Washington Post and other newspapers.

(The charges here focused only on Ellsberg's and Russo's actions in late 1969, when they photocopied the top-secret Pentagon study at a Hollywood advertising agency, and their "conspiracy," which the government said continued into late 1970.)

A jury of 10 women and two men had been hearing the evidence against Ellsberg and Russo and in their defense since mid-January.

The jurors were sent home for a week last Tuesday, while Byrne weighed the tangle of disclosures concerning the government's investigations of Ellsberg. This afternoon, they were notified by telephone that they would not have to bother returning to court next week.

Attorneys on both sides of the case had already expressed their misgivings that the jury, which was not sequestered, had been insulated from information about the recent sensational developments.

The Ellsberg-Russo defense fought to the last moment for a ruling from Byrne on its motion for a directed verdict of acquittal based on the assertion that the government's evidence was insufficient to sustain a conviction.

Russo, for his own part, repeatedly instructed his attorney Leonard I. Weinglass, that he wanted the case to go to the jury in order to vindicate his and Ellsberg's conduct in releasing to the public the secret history of American involvement in Southeast Asia.

Before Judge Byrne dismissed the case this afternoon, he indicated that if he were to rule on the motion for a directed verdict or acquittal, he would acquit the defendants on both counts, but send other points to the jury for a verdict.

He gave the defendants time to consult with their attorneys on whether they wanted to have him follow that course or rule on the dismissal motion.

After a moment, chief defense counsel Leonard E. Boudin said, "The defendants do press their motion, based on the totality of government misconduct." It was then that Byrne delivered his ruling.

While scolding the prosecution generally, the judge seemed to indicate that he viewed most seriously the revelation on Thursday that Ellsberg had been overheard in late 1969 and early 1970 in a wiretap on the Bethesda, Md., residence of Morton H. Halperin, then a consultant to the National Security Council and more recently "chief of staff" for the Ellsberg-Russo defense.

"Of greatest significance," Byrne said, was the discovery that the Justice Department and Federal Bureau of Investigation had lost or destroyed records of the wiretap on Halperin.

Byrne acknowledged during his ruling that the charges against Ellsberg and Russo "raise serious factual and legal issues that I would certainly prefer to have litigated to completion." Among those issues is the question of whether the statutes against conspiracy and theft of government property can be used to punish leaks of classified information.

But the judge said that, "The conduct of the government has placed the case in such a posture that it precludes the fair dispassionate resolution of these issues by a jury."

He suggested that the disclosures may have provided "only a glimpse" of the government's actions against Ellsberg, but added that what he had already learned was "more than disquieting."

With a trace of regret and disappointment in his voice, Byrne said that his responsibilities dealt "solely and only" with this case, and that he had no mandate or authority to launch a broader probe into the Watergate affair.

Although pressed repeatedly by Byrne over the past two days, chief prosecutor David R. Nissen had been unable to come up with more details on the wiretap or the missing records. This afternoon, the judge said he was willing to wait no longer.

At other times during the past two weeks, it had been disclosed that:

- A burglary squad reporting directly to the White House broke into the Beverly Hills office of Ellsberg's psychiatrist, Dr. Lewis Fielding, as part of a scheme to determine Ellsberg's "prosecutability."

- The Central Intelligence Agency, in possible violation of its legal authority, provided technical assistance to the burglars over a five-week period.

- The entire operation grew out of President Nixon's personal directive for an urgent investigation—outside the normal channels of the FBI—to identify the sources of leaks of "national security information."

- Convicted Watergate conspirator E. Howard Hunt Jr., a member of that operation, forged two official State Department cables to implicate the late President Kennedy in the 1963 assassination of South Vietnam President Ngo Dinh Diem.

- Byrne was approached in the midst of the Pentagon Papers trial by former chief White House domestic adviser John D. Ehrlichman about accepting the permanent directorship of the FBI.

During a court session this morning, defense attorneys for Ellsberg and Russo made a concededly half-hearted argument for dismissal of the case.

Boudin and Weinglass asserted that legal precedent supports a dismissal when the government has failed to produce the logs and other records of a wiretap.

"The government has engaged in an act whose legality it cannot even seek to establish," Boudin told the judge. "The government has destroyed the records or made them disappear."

Referring to allegations that records of "national security" electronic surveillances were removed from the FBI's files in 1971, Boudin said, "It makes no difference whether it was the White House, the Justice Department or the FBI" which conducted the wiretap that overheard Ellsberg—"although, apparently, one was subject to robbery by the other."

Weinglass contended that once any records of the wiretap were produced, the defense is legally entitled to inspect them and help in the court's determination of whether the surveillance was related to the case and had "tainted" the prosecution evidence.

On the contrary, argued chief prosecutor Nissen, the government should have the opportunity to demonstrate that it had an "independent origin" for all of its evidence.

But the thrust of defense arguments today was an appeal that Byrne not conclude the controversial case without first mounting a full investigation of the wiretap and other "governmental misconduct" and settling the complex legal issues involved by acquitting Ellsberg and Russo of all charges.

Weinglass suggested that acting FBI Director William Ruckelshaus's last-minute discovery of an FBI employee who remembered that Ellsberg had been overheard in a wiretap was "a White House attempt to divert the court" from more embarrassing disclosures.

"It is very possible," he argued, that "this (FBI) agent is a person assisting the government to get out from a very uncomfortable situation."

Boudin said after the judge's ruling that there was great concern in advance that Byrne might restrict himself to the wiretap issue in his dismissal, but he conceded that the ultimate decision was "the very broadest opinion we could have hoped for."

His co-counsel, Harvard law school Professor Charles R. Nesson, added that Byrne "really stuck it to them."



Associated Press

Daniel Ellsberg and wife Patricia express happiness outside Los Angeles federal courthouse where trial ended.

Pandemonium Reigns At Ellsberg Dismissal

By LARRY F. AARON
Washington Post Staff Writer

LOS ANGELES, May 11— "The only remedy," Judge W. Matt Byrne Jr. was concluding, and already the wave of cheers began. "... is that this trial..." spectators climbed onto the benches. "... be terminated."

Pandemonium.

There was a rush for the defense table. People began hugging each other. Defense attorney Charles Nesson immediately lit a huge cigar. Daniel Ellsberg, beaming, reached for his wife. People waiting in the corridor, who had not been able to get in, burst through the doors

even as Judge Byrne was murmuring "Thank you" to the attorneys and leaving the bench.

A photographer tried to snap the Ellsberg embrace, but it was still technically a trial in progress, and marshals descended.

That was the only sour note for the openly partisan crowd. Reporters who had been covering the case for two years shook the hands of Ellsberg and his co-defendant, Anthony J. Russo Jr., resplendent in red-and-white tie and blue shirt. Others hugged Patricia Marx Ellsberg and Russo's wife, Katherine Barkley.

The prosecutors slipped

out almost unnoticed. "What's your reaction?" a reporter asked assistant prosecutor Warren P. Reese.

"No comment," he said.

"Is there an appeal possible?"

"No. It's over. It's dead."

For the winners it was very much alive.

"We did it! We did it!" cried Pat Ellsberg, handing an Isaac Bashevis Singer novel to a friend and running a brush through her hair to get ready for the TV cameras. "There'll be parties tonight."

Now the hallway was filling with people, carrying Ellsberg, Russo and the three defense attorneys Nesson, Leonard Boudin and Leonard Weinglass along almost by force.

Russo reached a hand out to a building guard. "Hey Oscar," he called, "Don't the people own the courthouse now?"

Outside, on the courthouse steps, they were greeted by a horde of reporters, well-wishers and TV cameramen, booms and wires crossing like a Ben Shawn line drawing.

"This was the right way to end it," said Ellsberg, his slender figure almost swallowed by the crowd. Clad in an academically proper blue tweed sport coat and rep tie, he might have been announcing final grades for the semester. "It should have been ended. It was the government that cheated the jury out of its right to hear the evidence."

There was more small talk, then Ellsberg announced his intention to sue for damages against those "conspirators" who had caused all the trouble. The President led the conspiracy — not only against Tony and me, but the entire nation."

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Off to the side, Leonard
Boban stood alone remarkably.
The man who had won
for Dr. Benjamin Spock for
the Harrisburg Five, and
now, with the government's
help, for Ellsberg and
Russo, was asked what he
would do now.

White-haired, slightly
bent, 60 years old, he was
taking the excitement tranquilly.
"Well, it's all over,
the end of two years of
work. We'll be cleaning up
here for about five days,
seeing friends. We've been
meaning to see for about a
year, and taking a look at
Los Angeles. Then, I guess,
a week's vacation and back
to work."

The crowd was thinning
out now. "This puts the final
cap on the bankruptcy of
the Nixon administration."
someone exulted.

"We won't have Nixon to
kick around much longer,"
said another.

They were down on the
courthouse plaza, now, the
defendants and their law-
yers and a few reporters.
Tony Russo noticed a spe-
cial edition of The Los An-
geles Times in a newspaper
vending rack. The banner
read: "Ellsberg Case Dis-
missed."

Russo plugged in a dime,
opened the rack, pulled out
a handful of newspapers
and passed them around.

Mr. Felt _____
 Mr. Baker _____
 Mr. Callahan _____
 Mr. Cleveland _____
 Mr. Conrad _____
 Mr. Gubhardt _____

CIA Official Felt Aide Spoke for Nixon

By Laurence Stern

Washington Post Staff Writer

Gen. Robert H. Cushman Jr. said yesterday he assumed it was on President Nixon's behalf that former White House aide John D. Ehrlichman asked him to give Central Intelligence Agency undercover assistance to Watergate conspirator E. Howard Hunt.

The CIA paraphernalia—cameras, hidden tape recorders and wigs—was later used by Hunt in the burglary of Pentagon Papers defendant Daniel Ellsberg's psychiatrist, Dr. Lewis Fielding of Beverly Hills, in September, 1971.

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"I had known Mr. Ehrlichman for a good 10 to 12 years and respected him highly as a man of complete honesty and devotion to

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CIA chief James R. Schlesinger, with Marine Corps head Robert H. Cushman



By Ken Felt—The Washington Post (Washington)

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Cushman Says He Assumed Ehrlichman Spoke for Nixon

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duty," the four-star Marine general said of the former Presidential aide.

Cushman, who now serves as Marine Corps commandant, interrupted a European tour to present his testimony to a Senate Appropriations Subcommittee on intelligence.

Afterward, subcommittee chairman John L. McClellan (D-Ark.) commented to newsmen: "I don't think he (Cushman) would do it again."

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"Ehrlichman had been named within the White House as the man in charge of stopping security leaks and over-hauling the security regulations. The Central Intelligence Agency is charged with safeguarding intelligence sources and methods.

"From these facts, I then drew the conclusion which I believe any reasonable man would have reached, namely that Howard Hunt had been hired by the White House to act in the security field and that the Central Intelligence Agency was being ordered to assist him," Cushman asserted.

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Hunt, provided before he assumed control of the agency from Richard M. Helms, as "ill-advised."

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"When a man is in the position of Ehrlichman, the first deputy to the commander-in-chief," said Sen. Stuart Symington (D-Mo.), acting Armed Services Committee chairman, "there are not many military officers who would not jump."

Under the CIA's charter, the National Security Act of 1947, the CIA is proscribed from dealing with any internal security matters. That is the province of the FBI.

Cushman said that when Hunt called upon him on July 22, 1974, he "stated that he had a very sensitive one-time interview that the White House wanted him to hold with a person whose ideology he was not sure of and that he dare not reveal his, Hunt's, true identity."

He noted that "it must be recalled that Mr. Howard Hunt was a highly respected and honorably retired CIA employee of 20 years' service."

Nonetheless, said Cushman, White House wanted him to "I was not able to elicit any details of the interview which he stated that he had

to conduct and he said that on White House orders he was not to reveal the nature and scope of this interview nor of the fact that he worked for the White House.

"He did assure me, however, that he was working to a good purpose in the interests of the country."

After the spy gear was issued to Hunt by the CIA's Technical Services Division, Cushman reported the matter to then-director Helms, according to his affidavit.

The decision to cut off the aid came, he said, because "Mr. Hunt was becoming more and more unreasonable and demanding and was attempting to go far beyond the scope of the original instructions which I had given and which related to his statement that he had a one-time interview operation to conduct."

He ordered all relationships with Hunt discontinued, Cushman related, and informed Ehrlichman on August 27, 1971, that the assistance could be construed as improper for the CIA.

"I also advised him (Ehrlichman) that in my opinion Mr. Hunt was of questionable judgment. He should know better than to ask for such support," Cushman asserted. "Therefore, I made this recommendation to Mr. Ehrlichman for him to do with as he deemed proper."

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Ms. Herwig ☒
Mr. Mintz _____
Mrs. Neenan _____

Mr. Conmy ✓
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**PENTAGON PAPERS
CHARGES ARE
DISMISSED;
JUDGE BYRNE
FREES ELLSBERG AND
RUSSO, ASSAILS
IMPROPER
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CONDUCT**

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People's World _____

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Air of Expectancy, Then Tears, Shouts, Embraces

By JUDITH KENNARD
Special to The New York Times

LOS ANGELES May 11—

Her tears of joy had dried, but cheers still filled the courtroom when Patricia Ellsberg embraced one of many friends and said:

"I could never believe the scene of waiting for the jury to come in. I just knew it would never happen."

Federal District Court Judge William Matthew Byrne Jr. had just closed the Pentagon papers trial with a broad decision that harshly admonished the Government for misconduct.

Like every other major decision in the case since it went to trial in January, the final dramatic ruling came amid an air of expectancy that had pervaded the proceedings all week.

By 7 A.M., when the smog had already descended on Los Angeles, spectators had begun lining up in the corridor outside the dark brown door to the courtroom for the limited passes for access to the trial, which ended almost two years after Dr. Daniel Ellsberg and Anthony J. Russo Jr. were indicted.

Photographers waited for the judge, whose latest pictures, showing shorter and fuller hair, were taken three years ago. One successful pursuer caught him, dressed in a stylish, English-cut suit, as he entered the courthouse swinging his briefcase in apparent anticipation of the day ahead.

By court's opening at 10:20, more than 50 authorized spectators still had not been admitted. To make more room, members of the press were allowed to sit in the jury box while the jury remained excluded from the trial.

A peace offering of a single

magnolia blossom from supporters of the defendants — originally intended for the chief prosecutor, David R. Nissen — turned up instead on the defense table before Mr. Russo, who was dressed for the occasion in a dark blue suit coat brightened by a yellow blossom in his lapel and worn over his more familiar corduroy pants.

His wife, Katherine Barclay, her barebacked dress covered with a white shawl, was nearby. She recently returned to court after an absence that she accounted for by saying: "I just had my own life to live too."

Session Is Tense

The morning session was tense. Keyed-up spectators leaned forward to hear Leonard Boudin, counsel for Dr. Ellsberg, who made his argument for dismissal in the relaxed, half-smiling, manner that characterizes his courtroom appearances.

Leonard I. Weinglass, attorney for Mr. Russo, was deliberate and emphatic in his presentation, suggesting that the most recent misconduct by the Government was a tactic to close the case before more information could be brought out. The allegation, in a case with startling testimony, brought nods of agreement from a few.

By noon it had become clear by the judge's remarks that the case made by the prosecutor was inadequate. And after the noon break the courtroom was filled half an hour before the 1:30 court time to hear the ruling.

Attention was riveted on the judge. Speaking in tones more audible than usual, he rendered the decision that brought cheers and shouts from the smiling spectators.

Fears Disappear

A defense attorney, Charles Nessen, flagrantly disregarded the no smoking sign and lit up a cigar while onlookers rushed forward to find the special ones to cry with and congratulate.

All the fears of the defense that the trial would be dismissed on a technicality and not on broadly based Government misconduct were over. All the fears of another trial were over.

Mr. Boudin, beaming, stated: "I think the decision was appropriate, necessary, eloquent, justified and dispositive."

During the week, the revelations by the Government had been chronicled by Columbia Broadcasting System artist Don Julian with cartoons. One shows the judge striking the chief prosecutor and another shows the judge holding a gun to his own head.

Actors Attend

The trial has attracted the attention of Hollywood. Actor Jack Nicholson and director Roman Polanski dropped in for the day. But George Segal, the actor, has attended regularly since he met the Ellsbergs at a recent dinner party. Dressed every day for the last week in the same beige cotton suit, he has most often been seated close to Mrs. Ellsberg and her former mother-in-law, Idella Marx, on the family bench in the front of the room.

Today Mrs. Marx realized during the morning break that in her haste, she had left home wearing the tweed skirt to one suit and a plaid jacket to another.

Perhaps the record attendance for outsiders has been set by Mrs. Brooke Hopper, an art collector and daughter of agent and producer Leland Hayward. Mrs. Hopper, the epitome of California chic in her casual pants and scarves, has attended the trial almost daily since it began.

Knicks Star Watches

Interest in the trial was not limited to Los Angeles. Yesterday, New York Knicks basketball star Bill Bradley spent his only day in town, at the trial before the championship playoff with the Los Angeles Lakers last night, which the Knicks won.

During the last two weeks sympathy for the defendants has developed into outrage at the prosecution with the startling admissions of Government misconduct.

"In the middle of all the stuff that's going on, Ellsberg and Russo did a heroic act," said Mara Gibbs, a high school student who has attended the trial whenever school was out of session.

An elderly woman, who preferred not to be identified, was vehement before today's decision was rendered: "These men are being punished, wrongfully punished. And I think most working people agree with me."



United Press International

Judge William Matthew Byrne Jr., above, threw out the Pentagon papers case and, left, defendants were freed. They are Anthony J. Russo Jr., on the left, and Daniel Ellsberg.

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Text of Ellsberg Wiretap Memo

LOS ANGELES, May 11 (AP)—Following is the text of a memorandum regarding missing records of a wiretap on Daniel Ellsberg's phone conversations that was submitted to the Pentagon papers trial yesterday by Henry E. Peterson, Assistant Attorney General:

The attached are answers provided by the Federal Bureau of Investigation to the questions put to the Government by the court today.

Q. How many interceptions of Ellsberg were there in 1969 and 1970?

A. We do not know the answer to this question because as yet we have not been able to locate the records.

Q. How long was surveillance of Halperin's residence?

A. The surveillance occurred between the spring of 1969 and June of 1971 as best we can determine. We do not know for what period of time within that span the surveillance was active.

Records Not Found

Q. What was the nature of the surveillance? Example, was it court authorized. Authorized by the A.G., etc.

A. Testimonial evidence indicates that surveillances were authorized by the Attorney General in accordance with national security procedures. The records, however, have not been found.

Q. Is it still correct that there are no records of the surveillance?

A. As of this date we have been unable to locate the records.

Q. Why, when the indexes were run for Halperin during the period specified for his consultancy, was his name not discovered as having been the subject of surveillance?

A. The period for Halperin's consultancy was from November, 1971, to the present. The court directed us to search the F.B.I. records for surveillance during this period. There was no surveillance nor overhearings of Morton Halperin during this time frame.

Record-Keeping Process

Q. The judge wants full report on the results of the Ruckelshaus investigation into wiretapping on the Ellsberg case.

A. Our investigation indicates no wiretapping interceptions by the F.B.I. relating to the Pentagon papers investigation, except those already submitted to the court in camera [in chambers] and those were not conducted in connection with the Pentagon papers investigation.

Q. What were the procedures at the time of this surveillance operation? What type of records were kept—tapes, logs, records, etc.

A. Telephonic interceptions were tape recorded and logs were transcribed from the tapes—summaries of the logs were prepared and tapes were erased.

Q. Why is there no record in the F.B.I.'s office or the Department of Justice of these supposed overhearings?

A. One of the purposes of the present investigation under way is to determine the reason for the disappearance of these F.B.I. and Department of Justice records and the disposition thereof. Key interviews are currently being conducted, the results of which are expected to be obtained shortly. Our investigation shows records had been maintained, however, these records are now missing and have been since approximately July-October, 1971.

Q. The court wants to check for any electronic surveillance of Halperin back to Jan. 1, 1967. If there are no logs or records, why not?

A. We are checking our records back to 1967 and we will furnish the information as soon as it is available.

Q. If there were logs and records and they're gone, why and where are they?

A. See previous answer No. 8.

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Judge Dismisses Ellsberg Charges

Actions by U.S. Offend Justice, Byrne Declares

PART I
BY GENE BLAKE
Times Staff Writer

U.S. Dist. Judge Matt Byrne declared a mistrial and dismissed all charges Friday against Daniel Ellsberg and Anthony J. Russo in the Pentagon Papers case, saying the totality of government actions "offend a sense of justice."

Byrne said "bizarre events" recently disclosed, ranging from a special CIA-aided White House investigation of Ellsberg to burglary and wiretapping, have "incurably infected the prosecution of this case."

The judge's ruling apparently assured that both Ellsberg and Russo can never be tried again on charges of conspiracy, theft and espionage for the leak of the top-secret Vietnam war study.

"Under all the circumstances, I believe that the defendants should not have to run the risk, present under existing authorities, that they might be tried again before a different jury," Byrne said.

Spectators Cheer

Spectators in the crowded courtroom reacted with wild cheering, whistling and applause. Ellsberg, 42, and Russo, 36, embraced their lawyers, other defense aides and then their wives in an emotional panoply of hugging, kissing, laughing and crying.

Thus ended nearly two years of battling in and out of court over what some considered traitorous acts and others courageous patriotism. But it ended on a sadly inconclusive note for many.

For the really crucial issues in the case—whether the government's se-

curity classification system can be overridden to bring hidden government actions to public attention—were not resolved.

Byrne took note of that in his comments before announcing the end of the case.

Government's Role

"The charges against these defendants raise serious factual and legal issues that I would certainly prefer to have litigated to completion," he said.

"However, while I would prefer to have them litigated, the conduct of the government has placed the case in such a posture that it precludes the fair dispassionate resolution of these issues by a jury."

The judge noted that the defense had stated a preference to argue a motion for judgment of acquittal before he considered dismissal.

But he told defense attorneys that he did not believe that would dispose of all the issues and the counts involved in the case.

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Mr. Felt ☒
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10-14 by going to the... some of the issues would the defendants have an opportunity to be acquitted on all counts," Byrne said.

He told the defendants that he was prepared to rule on the dismissal motion unless they believed their rights would be injured, and the choice was theirs.

"They may elect to go to the jury and leave for post-trial determination the issue of taint, as I have already discussed," Byrne said.

"May we have a moment, your honor?" asked Russo, and the defendants conferred with their lawyers privately at the counsel table.

Ellsberg's chief counsel, Leonard B. Boudin, then told the judge that the answer would be in the affirmative.

He said the defendants would press their motion for dismissal "upon the totality of government misconduct, including the suppression of evidence, the invasion of the physician-patient relationship, the illegal wiretapping, the destruction of relevant documents and the disobedience to judicial orders."

Scope of Ruling

Byrne agreed that his ruling was based on the scope stated by Boudin.

"It is not based solely on the wiretap, nor is it based solely on the break-in (of Ellsberg's psychiatrist's office) and the information that has been presented over the last several days," the judge said.

He noted that the prosecution since April 26 had made "an extraordinary series of disclosures regarding the conduct of several governmental agencies" in connection with the defendants.

"It is my responsibility to assure the defendants a fair trial and the rights of the defendants," Byrne continued. "My responsibility relates solely and only to this case, to the rights of the defendants and their opportunities for a fair trial with due process of law."

He said his repeated demands to the government for all information about "these highly unusual disclosures" had developed much information, "but new information has produced new questions, and there remain more questions than answers."

Unprecedented Actions

The judge said the disclosures demonstrate that governmental agencies "have taken an unprecedented series of actions" with respect to the defendants.

"After the original indictment, at a time when the government's rights to investigate defendants are narrowly circumscribed, White House officials established a special unit to investigate one of the defendants (Ellsberg) in this case," he related.

"The Central Intelligence Agency, presumably acting beyond its statutory authority, and at the request of the White House, had provided disguises, photographic equipment and other paraphernalia for covert operations," he continued.

Also revealed, he said, was that the special unit requested and obtained from the CIA two psychological profiles of Ellsberg.

"Of more serious consequences," the judge went on, "is that the defendants and the court do not know the other activities in which the special unit may have been engaged and what has happened to the results of these endeavors."

"The special unit was destroyed, and though I have inquired of the government several times in this regard, no answer has been forthcoming."

Not Informed

Byrne noted that although some governmental officials were aware of these "illegal activities," the court, the defendants and apparently the prosecuting attorneys were not informed for some 10 days after a memo was written by Earl J. Silbert, the chief prosecutor in the Watergate case.

"These recent events compound the record already pervaded by incidents threatening the defendants' right to a speedy and fair trial," he said.

"The government has time and again failed to make timely productions of exculpatory information in its possession requiring delays and disruptions in the trial."

Byrne then took up what apparently was the final straw, the government's disclosure only two days ago that one or more conversations of Ellsberg were wiretapped between early 1969 and mid-1971, when he was actively engaged in copying and distributing the Pentagon Papers.

"Of greatest significance is the fact that the government does not know what has happened to the authorizations for the surveillance, nor what has happened to the tapes nor to the logs nor any other records pertaining to the overhead conversations," he said.

The judge noted that the records in the Department of Defense and the FBI on the matter compound the fact that the documents have been missing since the period of July to October, 1971.

"There is no way the defendants or the court, or indeed, the government itself can test what effect these interceptions may have had on the government's case here against either or both of the defendants," Byrne continued.

He said continuation of the government's investigation is no solution, noting that other delays have threatened to compromise the defendants' rights and each day the investigation seems further from completion.

"Moreover, no investigation is likely to provide satisfactory answers where improper government conduct has been shielded so long from public view where the government advises the court that pertinent files and records are missing or destroyed," he added.

Not Considered Fair

In considering what action to take, Byrne said he had carefully considered the granting of a mistrial alone, which the defendants had not requested. He said he concluded that would not be fair.

Although precedents are not entirely clear on the point, there is a possibility that had a mistrial alone been granted — even on the judge's own motion — Ellsberg and Russo could have been tried again.

By granting both the mistrial and the motion to dismiss, it was the judge's stated intent to preclude that possibility.



REJOICING—Anthony Russo and wife, Katherine Barkely, after the end of the Pentagon Papers trial.
 Times photo by ~~Carl~~ Montney



Judge Matt Byrne
 Times photo



IT'S ALL OVER—Daniel Ellsberg and his wife, Patricia, outside the U.S. Courthouse here as they savored decision of the judge in dismissing the case against Ellsberg and a fellow defendant. Times photo by Don Cormier.

'DESERVES DAY IN COURT'

President Is the Real Defendant --- Ellsberg

BY JACK JONES and JOHN KENDAL

Times Staff Writers

Courtroom cheers and applause had barely subsided after U.S. Dist. Judge Matt Byrne's dismissal of charges in the Pentagon Papers case Friday when Daniel Ellsberg and Anthony Russo declared one "defendant" has yet to be cleared.

The accused, as far as they were concerned, was President Nixon.

"I think this prosecution was aborted by the White House because we were getting too close to the highest authority—to the President," said an elated Ellsberg.

Clutching his wife, Patricia, and codefendant Russo in a crush of newsmen, cameras and antiwar supporters outside the Federal Courthouse, Ellsberg contended the real "crime" involved was "the sending of Americans to die and kill in Vietnam."

He said the President "appears to be the ring-leader" of government efforts to suppress antiwar efforts — suppression including what Byrne called "governmental misconduct" in the Pentagon Papers prosecution.

Day in Court

The President, Ellsberg added, "deserves his day in court."

Russo called the decision "a great partial victory."

He said, "We brought the President into this case. Certainly the facts are that the President was involved from the very beginning. I am very disappointed that the President didn't come here and testify under oath."

Leonard Boudin, chief defense counsel, accepted hugs and congratulations from many Ellsberg-Russo supporters who had burst into cheers and handclapping as Byrne finished his declaration that "government misconduct" had jeopardized the defendants' rights.

Boudin called Byrne's ruling "appropriate, necessary, eloquent, justified and dispositive," suggesting by the last word that the judge had disposed of the principal issue in the case by addressing himself to "the totality of government misconduct."

Thus, Boudin indicated, he was satisfied with a dismissal of charges rather than an outright judgment of acquittal.

Case Is Over

The case is over as far as his clients are concerned, Boudin said. "Now the case is against the government."

The prosecutor, Asst. U.S. Atty. David R. Nissen, closed his briefcase after Byrne's ruling and left the courtroom, saying only that he had "no comment."

That was a dramatic contrast to the defense side of the courtroom, where Ellsberg hugged and kissed his tearful wife and embraced each of his attorneys, Boudin, Leonard Weinglass and Charles Nesson.

Spectators came to their feet to give Judge Byrne an ovation as he left the bench.

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Ellsberg called the trial an "illustration . . . of an arrogant executive acting contemptuously abroad, acting contemptuously of human beings, acting beyond the Constitution..."

He said the trial "was started to reflect a President and ended to avoid the impeachment of the President."

Defense attorneys had made it clear they suspected the White House of purposely opening the door to dismissal by the FBI revelation Thursday that Ellsberg's voice had been picked up on a government wiretap about the time he was copying the Pentagon Papers.

The fact that actual records of that "overhear" were said by the FBI to have disappeared was cited by Byrne in his opinion that the case was destroyed by the government itself.

Ellsberg expressed satisfaction that the trial "brought out the facts" and added:

"It is clear that the people with names like Ehrlichman, Haldeman, Ziegler and others were only obeying orders. They were only good and obedient servants and the man they were obeying . . . was the President of the United States."

He said, "It seems clear to me now that the information, if not by any means enough to convict the President, was enough to indict the President."

"If the facts prove to be what they appear to be now, the President has led a conspiracy — not only against Tony (Russo) and me—but against this nation."

He said he plans to file a lawsuit for damages against the conspirators, beginning with Mr. Nixon and going on down to the privates . . .

Such a suit, he declared, would "contribute to getting the facts about outlaw behavior in front of the public, by availing ourselves of our rights to sue for damages, to subpoena witnesses and take depositions."

He noted that the court had heard "what the government had been doing—breaking in, burglarizing, bugging, forging and leaking documents that they themselves said were sensitive."

"We heard the prosecutor in this case, I think, tell where this Administration is at and what their understanding is of law and the Constitution and what it means to be an American."

Guilty: The Government

The dismissal of all charges of espionage, theft and conspiracy in the Ellsberg case is an indictment of the Government's resort to police-state tactics in its effort to discredit and intimidate critics of its Vietnam policy.

Seldom has a Government-initiated criminal prosecution revealed such contempt for individual rights and lawful procedure by the Government itself.

By the same token, seldom has a case provided more dramatic proof of the importance of a free and independent judiciary operating as a check on abuses of executive power. Both the best and the worst in the current state of the American political process were on display in the Federal district court in Los Angeles.

The one regrettable aspect of the decision is that it leaves unresolved the basic question of law raised by the Administration's mania for secrecy, its consistent stretching of any legitimate concept of national security into an instrument for cutting off public access to the data required for intelligent decisions on vital matters of policy. It would have been a manifestly unfair burden on Dr. Ellsberg and his co-defendant, Anthony Russo, to have forced them to stand trial again, in the light of the judge's finding that a fair verdict had been rendered impossible by the scope of governmental misconduct throughout its investigation into the leak of the Pentagon papers. But the absence of a definitive ruling on where the national security line properly begins and ends leaves the way open for further abuses by a secrecy-minded Administration.

The formation of a special White House unit to spy on Dr. Ellsberg, the unconscionable raid on the files in his psychiatrist's office and the disclosure that the F.B.I. had been tapping his telephone calls long before the leak—with the records mysteriously vanishing from the official file—were all chilling evidences of the misapplication of official power. The resources of the C.I.A. were even more outrageously misapplied. Only under extreme pressure from the court did the Government inform the defense of these trespasses, and even with that pressure great gaps were left in the information supplied.

Perhaps the most shocking transgression of all was the action, in the midst of the trial, of the President and John D. Ehrlichman in calling Judge Byrne to the California White House in San Clemente to offer him the directorship of the F.B.I. Whatever the propriety of the judge's going at all while presiding over a trial with such heavy political overtones, he of course refused even to entertain the offer during the trial. His decision now to dismiss all the charges is a splendid affirmation of American justice and a needed rebuke to the misuse of executive authority.

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Red Embassy Had Pentagon Papers

BY J. F. TER HORST

Special to the Star-News

The Soviet Union was given a set of the top secret Pentagon Papers before they were first made public in 1971 by the New York Times, according to a former White House official.

But shortly thereafter, the source said, Soviet officials returned the documents to U.S. authorities—apparently without having examined them.

An account of the bizarre episode was first obtained by the North American Newspaper Alliance during the controversy over the Pentagon Papers and the administration's unsuccessful court battle to block their publication two years ago. The account was not written then because it could not be corroborated independently.

Monday, however, a sworn reference to Soviet "possession" of the Pentagon Papers came to light in the Los Angeles trial of Daniel Ellsberg on charges of stealing, copying and releasing them.

EGIL KROGH, the former presidential aide who resigned his undersecretary of transportation post yesterday, submitted an affidavit explaining his supervisory role in a White House investigation into Ellsberg's background, including the burglary of the office of Ellsberg's psychiatrist.

Citing national security reasons, Krogh's affidavit said the Nixon administration was concerned whether release of the Pentagon Papers was part "of a wider conspiracy." Krogh said he was "informed by the FBI that the so-called Pentagon Papers were in the possession of the Soviet Embassy, Washington, D.C. prior to their publication by the New York Times newspaper, suggesting an effort to aid and abet an enemy of the United States through the ally."

While Krogh's statement to the court does not go into details, the original White House source explained it this way: Unidentified persons were observed delivering bundles to the Soviet Embassy.

Mr. Felt ☒
Mr. Baker ☐
Mr. Callahan ☐
Mr. Cleveland ☐
Mr. Conrad ☐
Mr. Gelman ☒
Mr. Jenkins ☐
Mr. Marshall ☐
Mr. Miller, E. S. ☒
Mr. Soyars ☐
Mr. Thompson ☐
Mr. Walters ☐
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Tric Into Intrusion of Executive Branch Into Judicial Process But Sudden End Leaves Vital Issues Unresolved

LOS ANGELES, May 11—In an era of courtroom spectacles, the Pentagon Papers trial became one of the most spectacular of all.

This was so not only because of the issues that it raised but also because Daniel Ellsberg and Anthony J. Russo Jr., the defendants, did not contest the facts of the case: that Dr. Ellsberg removed the Pentagon papers from the Rand Corporation and that he and Mr. Russo copied them.

It started as a major test of the First Amendment to the Constitution, of the Government's authority to control information and of the public's access to that information.

And although the manner of the trial's conclusion left those constitutional issues largely unresolved, the denouement proved once again, in dramatic fashion, that finally truth is an army too many to turn back.

For in the last week of the trial, in a series of disclosures no novelist could invent, the Government admitted, chapter by chapter, the intrusion of the executive branch into the judicial process to a degree possibly unparalleled in American history.

Break-In Disclosure

There was, for instance, on the 80th day of the trial, the disclosure that the office of Dr. Ellsberg's former psychiatrist had been broken into in an effort to obtain his "psychiatric profile," and that this had been done by a team of five persons led by E. Howard Hunt Jr. and G. Gordon Liddy, convicted Watergate conspirators who were operating then out of the White House.

This was quickly followed by other, even more stunning disclosures, all of them reluctantly offered. John D. Ehrlichman, resident Nixon's former chief adviser for domestic affairs, said that acting on the President's orders he had directed an ex officio White House investigation into the public release of the Pentagon papers, then into Dr. Ellsberg's background.

That investigation led to the break-in, and two of Mr. Ehr-

lichman's White House associates, Egil Krogh Jr. and David Young, were forced by the disclosure at this trial to quit Government service. Then Charles W. Colson, former special counsel to the President, admitted that he, too, knew about the break-in, but was told by Mr. Ehrlichman and John W. Dean 3d, the President's counsel, never to mention it because it had been done to protect national security.

Mr. Colson said that he had learned of the burglary and told no one, though he was

assigned originally by the President to investigate the Watergate scandal. And it was revealed, at this trial, that Mr. Colson also ordered one of the burglars, Hunt, to forge State Department cables to directly implicate President Kennedy in the assassination of Premier Diem of South Vietnam.

Further, the trial showed that contrary to law, the Central Intelligence Agency does in fact operate clandestinely within the borders of the United States. Marine Corps General Robert Cushman admitted that the burglary was committed on Sept. 3, 1971, with equipment and disguises supplied by the C.I.A., although the C.I.A. insisted it had not known a burglary had been planned.

At the time, General Cushman, now Commandant of the Corps and a member of the Joint Chiefs of Staff, was deputy director of the C.I.A.

Disclosure by Judge

And in the midst of all these disclosures, the trial judge, Matthew R. Byrne Jr., admitted in answer to a question put to him by Charles R. Nesson, a defense counsel, that twice last month he met with Mr. Ehrlichman to discuss the possibility of becoming director of the Federal Bureau of Investigation.

Perhaps, too, the trial demonstrated that there exists even in government an inner dramatic tension similar to that of a finely written play. For former Attorney General John N. Mitchell, the man who ordered

the prosecution of Dr. Ellsberg and Mr. Russo—the prosecution which led to many of the disclosures that embarrassed the Administration — has himself been indicted in an unrelated, campaign contribution case.

There was even a counterpoint to this: the promotion of two Government witnesses in this case. They were J. Fred Buzhardt, general counsel of the Defense Department, who was moved to the White House staff, and Army Gen. Alexander M. Haig Jr., another Government witness, who was made Chief of Staff of the White House staff.

The Pentagon papers are a 47-volume "top secret-sensitive" study of America's involvement in Southeast Asia. It was compiled by a special Vietnam History Task Force set up in the Defense Department by Robert McNamara, then Secretary of Defense, on June 17, 1967. The study was actually completed on Jan. 15, 1969, shortly before Clark Clifford left the office of Secretary of Defense.

The saga of the Pentagon papers actually started on the morning of Sept. 30, 1969, when Dr. Ellsberg telephoned his friend Mr. Russo and asked if he knew anyone with a Xerox machine. Mr. Russo said he did, and that evening Dr. Ellsberg removed portions of the Pentagon Papers from the Rand Corporation in Santa Monica, where he was employed. Along with Mr. Russo and several others he started copying them. It took about eight sessions, lasting into November, to finish the job. Dr. Ellsberg testified.

Jenkins _____
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 Mr. Thompson _____
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 Mr. Barnes _____
 Mr. Bowers _____
 Mr. Herington _____
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 Mr. Mintz _____
 Mr. Eardley _____
 Mrs. Hogan _____

BURROW (LAST)

The Washington Post _____
 Times Herald _____
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 Daily News (New York) _____
 Sunday News (New York) _____
 New York Post _____
 The New York Times 1415
 The Daily World _____
 The New Leader _____
 The Wall Street Journal _____
 The National Observer _____
 People's World _____

Date 5-12-77

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65-74060-A file
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"All the News
That's Fit to Print"

The New York Times

LATE CITY EDITION

Volume: 100 Number: 100
 Date: July 1, 1971
 Time: 10:00 AM
 Price: 15¢
 Paid: 15¢

FRI JUL 2 1971

NEW YORK TIMES

NEW YORK TIMES

15 CENTS

SUPREME COURT, 6-3, UPHOLDS NEWSPAPERS ON PUBLICATION OF THE PENTAGON REPORT; TIMES RESUMES ITS SERIES, HALTED 15 DAYS

Nixon Says Turks Agree To Ban the Opium Poppy **PRESIDENT CALLS STEEL AND LABOR** Pentagon Papers: Study Reports Kennedy Made 'Gamble' Into a 'Broad Commitment' **BURGER DISSENTS** First Amendment Rule

Headline on the front page of The New York Times of July 1, 1971, when the U.S. Supreme Court made ruling

F.B.I. Knew But Didn't Act

It is now known that by April, 1970, at the latest, and probably much earlier—even perhaps in October, 1969—the F.B.I. knew that Dr. Ellsberg was copying "top secret-sensitive" documents, but took no action against him.

In this trial he and Mr. Russo were originally accused of stealing and copying 18 volumes of the Pentagon papers, plus two other "top secret" documents—eight pages of a 1969 Joint Chiefs of Staff memorandum and a 1954 Geneva Accords memorandum. The judge later precluded the Geneva Accord memorandum from the trial.

The Pentagon papers were first disclosed to the public in The New York Times on June 13, 1971. On June 15, for the first time in American history, a newspaper of general publication, The Times, was restrained by prior court order from publishing articles—about the Pentagon papers.

In ordering The Times to halt publication of the material, United States District Judge Murray I. Gurfein said that any temporary harm done to the newspaper by his order was "far outweighed by the irreparable harm that could be done to the interests of the United States" if more articles and documents were published while the case was in progress.

The new day, June 16, 1971, the Justice Department asked Judge Gurfein to order The Times to turn over to the Government's inspection the

Pentagon study from which its Vietnam series was drawn. But, Judge Gurfein later withheld action on the Government's demand. Instead, The Times gave the court and the Justice Department a list of descriptive headings for those portions of the Pentagon archive in The

On June 18, the Washington Post in its late editions of that day began what it described as a series of articles based on "sections" of a Pentagon study "made available to The Washington Post" and the articles were distributed by The Washington Post-Los Angeles Times News service and described by The Associated Press and United Press International.

The next day Judge Gurfein refused to enjoin The New York Times from publishing more articles based on the secret Pentagon study, declaring that the press must be free to print sensitive matter even if it embarrassed the Government.

However, publication was blocked by Judge Irving R. Kaufman of the United States Court of Appeals. On June 23, the appeals court held that The Times could resume publication of its series but could not use any material that the Government contended was dangerous to national security. The Times appealed to the Supreme Court the next day.

The restraint was lifted on June 30, 1971, by the Supreme Court, in a 6-to-3 ruling, but that ruling left important Constitutional questions unresolved, particularly the question of freedom of press under the First Amendment. It was left somewhat blurred by the fact that the case drew nine separate opinions from the Justices.

But the publication of the Pentagon papers in The Times set off another chain reaction. Dr. Ellsberg was arrested on June 25 on the eve of the oral arguments in the Supreme Court. He was charged with espionage. Later, in December, 1971, he was reindicted, and the charges against him then were greatly expanded.

Swarms of F.B.I. agents and

Air Force investigators descended on the Rand Corporation to interview employees and officials, and to find out what other "top secret" documents, if any, had been taken. A similar investigation shook up the Pentagon itself.

In the White House, President Nixon ordered the creation of his ex officio task force to investigate the leak, and nearly two years later Mr. Colson recalled that at the time there were many White House meetings about the disclosure—"kind of panic sessions," he called them.

Second Jury Selected

The trial began on Jan. 3, 1973, with the start of selection of a second jury, the first having been dismissed because of a four-month delay over a previous wiretap argument.

The Government had charged the defendants with espionage, theft and conspiracy covering a period between March 1, 1969, and Sept. 30, 1970—nine months to more than two years before the papers were first made public in The Times.

The broad constitutional issues involved were those of the First Amendment, for the Government was, in essence, charging Dr. Ellsberg with the theft of information, and with conspiring to deprive the Government not of materials—for the copied documents were returned—but of the information in those documents.

And, in a country where there was no Official Secrets Act, the Government was contending, for the first time, that the disclosure of information classified as "top secret" violated the espionage laws even though that information was not given to a foreign power. Indeed, there is no law, only

Executive orders, pertaining to the disclosure of classified information. And so, legal authorities said, the Government was trying to make a jury create law where no Congressional statutes existed.

These legal authorities say that the way the trial ended—not by a jury verdict but because of legal technicalities—has left those constitutional issues unresolved.

The defense did try through the 89 days of the trial to litigate the war in Vietnam, and, for the most part, failed; it tried, too, to test the classification system, and, again, because of the judge's rulings, it failed.

But the American people were, through this trial, given a considerable insight into the intelligence-gathering methods of the United States.

There was weighty testimony, for instance, on how intelligence analysts do their work; and there was testimony about agents in the field, and about the wiretapping by intelligence agencies of even the heads of state.

The jury was told about the inner working of secret diplomacy, about spy equipment in the sky, and even about infrared equipment that picked up the warmth of human beings at great distances and, therefore, was useful in detecting enemy troops in the field.

All this was developed to combat the Government's contention that disclosure of the papers could, in fact, have damaged the national security of the United States.

It was essential for the Government to prove this to convict the defendants on the espionage charges outstanding against them. But that issue was never resolved.

FBI Report of Bugging Disrupts Ellsberg Trial; More Data Asked

BY GENE BLAKE
Times Staff Writer

A new report of a wiretap that picked up the voice of Daniel Ellsberg at about the time he was copying the Pentagon Papers threw his trial into an uproar Thursday and threatened to end it completely. U.S. Dist. Judge Matt Byrne halted consideration of defense motions for acquittal or dismissal on other grounds, saying the new development puts a "different posture" on the issues.

Noting that the FBI says the records of the wiretapping are now missing, Byrne set a hearing for 10 a.m. today on whether that is sufficient grounds for immediate dismissal.

Acting FBI Director William D. Ruckelshaus sent a preliminary report to Byrne indicating that the electronic surveillance was maintained between the spring of 1969 and June of 1971 on the home of Morton H. Halperin.

Halperin had been a deputy assistant secretary of defense with overall supervision of the Pentagon Papers task force and served on the National Security Council staff in the White House in 1969.

He left full-time government service in September, 1969, but continued as a consultant to Henry A. Kissinger until April, 1970. Most recently, he has been a consultant to attorneys for Ellsberg and codefendant Anthony J. Russo, and was a key defense witness in the trial.

The report of Ruckelshaus indicated that the surveillance was recalled by an FBI employee, but a preliminary investigation turned up no record of such a conversation.

The FBI reported that records of the surveillance had been maintained, but had been missing since sometime between July and October, 1971. Byrne disclosed. The Pentagon Papers were first published by the New York Times and other newspapers in June of that year. Byrne, who has had the government under orders for a year to furnish him with information of any electronic surveillance in the case, demanded to know why there was no record.

Demands Answer

"If there are not logs and records I want to know why not," he told Justice Department attorney David R. Nissen. "If there were and they are gone, I want to know why."

The judge gave Nissen an hour to obtain answers to his questions by telephone from the Justice Department and the FBI.

Nissen reported back that he was unable to get the answers because both Ruckelshaus and Henry E. Petersen, head of the Justice Department's criminal division, were out.

Byrne gave Nissen another three hours, but not much else was learned from Washington—merely the apparent period of the surveillance and the fact that the records were missing.

Mr. Ford _____
Mr. Baker _____
Mr. Callahan _____
Mr. Cleveland _____
Mr. Conrad _____
Mr. Gebhardt _____
Mr. Jenkins _____
Mr. Marshall _____
Mr. Miller, E. _____
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The National Observer _____
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The Los Angeles Times Part I Page 1

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The surveillance would have been recorded and transcribed and summaries prepared, but such records could not be located.

"Apparently Mr. Ellsberg was surveilled during the most crucial time of the indictment," Byrne noted in pointing out the significance of the new disclosure.

Dates Pointed Out

The judge said Ellsberg was engaged in copying the Pentagon Papers from October, 1969, to May, 1970. He also pointed out that the FBI was investigating Ellsberg and the Rand Corp. in early 1970. It has been previously reported that former Atty.

Gen. John N. Mitchell, at the request of the White House but over the objections of the late FBI Director J. Edgar Hoover, authorized wiretapping of White House aides and newsmen in an effort to plug news leaks.

Records Vanish

Hoover reportedly kept records of the wiretaps and, enraged when then Dep. Atty. Gen. Richard G. Kleindeinst tried to force the FBI chief to step down, threatened to disclose them. The records then disappeared from the FBI files, according to these reports.

Defense attorney Leonard B. Boudin requested that the government make an inquiry into these matters overnight to Mitchell, Kleindeinst, former Asst. Atty. Gen. Robert C. Mardian and "regrettably, the President."

Boudin, while agreeing to argue the wiretap issue this morning, said he would prefer to proceed to the motion for judgment of acquittal.

"We feel very, very strongly that it is in the best interest of our country that we have the opportunity to present our case. We feel that not having a chance for a judgment of acquittal."

"The case has public issues of profound importance. It would be unfortunate if your honor's views as to the law after two years of work were not to be elucidated."

No Delay Seen

But Byrne said the new matter has intervened, and he wants to hear from the attorneys on it first.

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"The court must make only one finding — that through the purposeful act of making those records disappear, they cannot be turned over."

An earlier wiretap disclosure brought the case to a halt last summer and eventually led to a mistrial and selection of a new jury.

That wiretap was said to have picked up the voice of a defense attorney or consultant during a "foreign intelligence" operation. Byrne ruled it had nothing to do with the case and it was never more fully disclosed, although the matter was taken to the U.S. Supreme Court.

Ruckelshaus' report said that shortly after becoming acting FBI director he initiated an investigation

to determine present or past activities in this case and to determine whether or not there was any evidence of a conspiracy to obstruct justice.

The preliminary report, which I received last Thursday night, indicates that an FBI employee began the wiretaps in early 1970. Mr. Ellsberg had been overheard talking from an electronic surveillance of Dr. Morton Halperin's residence," Ruckelshaus stated.

Presence Recalled

"It is this employee's recollection that the surveillance was of Dr. Halperin and that Mr. Ellsberg was then a guest of Dr. Halperin."

"I have no information concerning the substance of the conversation nor has the investigation to date been able to find any record of such a conversation. The investigation, of course, is not complete and further facts bearing upon the wiretaps may be uncovered."

Also disclosed by Byrne Thursday was an FBI interview of former White House special counsel Charles W. Colson, who said he had been instructed by former presidential counsel John W. Dean III not to discuss the Pentagon Papers with the FBI or the Watergate prosecutor.

The reason given, according to Colson, was that "it was a national security matter of the highest classification." Colson said he received the same instructions from John D. Ehrlichman, former White House domestic affairs adviser.

Colson recalled meetings at the White House in early July, 1971, concerning

the disclosures of the Pentagon Papers.

The FBI quoted him as describing these meetings as "kind of panic sessions" to determine what was going on and trying to establish what was going to be published next by the newspapers.

Recruiting Told

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He said he knew they were conducting a check for a personality profile of Ellsberg, to determine what motivated him, what kind of "wild things" he might do.

But Colson said he had no prior discussion or advance knowledge of the

burglaring of the office of Ellsberg's psychiatrist.

Further details of two CIA psychiatric profiles on Ellsberg furnished to White House aide David Young in August, 1971, were turned over to the defense by Byrne, but were not fully revealed publicly.

Byrne indicated the profiles were based on newspaper articles and television interviews, plus information received from the State Department and the FBI, with no clinical examination.

Two additional CIA reports on aid given to Hunt and Liddy also were released by the judge. And he released an FBI report of an interview with Felipe de Diego, who said he would tell all about his participation in the burglary if granted immunity from prosecution.

(Mount Clipping in Space Below)

FBI REPORT OF BUGGING DISRUPTS ELLSBERG TRIAL

BY GENE BLAKE

Times Staff Writer

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Mr. Thompson ☒
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Mr. Armstrong ☒
Mr. Bowers ☒
Mr. Herington ☒
Mr. Herwig ☒
Mr. Mintz ☒
Mrs. Neenan ☒

(Indicate page, name of newspaper, city and state.)

I-1 Los Angeles Times
Los Angeles, Calif.

Date: 5/11/73
Edition: Friday final
Author: Gene Blake
Editor: William F. Thomas
Title: MC LEK

Character:

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Classification: 105-27952*
Submitting Office: Los Angeles

☐ Being Investigated

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much else was learned from Washington—merely the apparent period of the surveillance and the fact that the records were missing.

In any such surveillance, the FBI reported, tapes would have been recorded and transcribed and summaries prepared, but such records could not be located.

"Apparently Mr. Ellsberg was surveilled during the most crucial time of the indictment," Byrne noted in pointing out the significance of the new disclosure.

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"The preliminary report, which I received last (Tuesday) night indicates that an FBI employee re-

calls that in late 1969 and early 1970 Mr. Ellsberg had been overheard talking from an electronic surveillance of Dr. Morton Halperin's residence," Ruckelshaus stated.

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F.B.I. Tap Picked Up Calls Ellsberg Made in 1969-'70

By MARTIN ARNOLD

Special to The New York Times

LOS ANGELES, May 10—One year after the trial judge ordered that all information on wiretaps be handed over to the court, the Government disclosed today at the Pentagon papers trial that telephone calls of Dr. Daniel Ellsberg were picked up by F.B.I. wiretaps in late 1969 and early in 1970.

And, it was disclosed, the records of the wiretaps and the transcripts of them disappeared from the Federal Bureau of Investigation sometime between July and October, 1971.

The disclosure goes to the heart of "taint" of evidence and testimony in this trial, and United States District Court Judge William Matthew Byrne Jr. immediately suspended the court proceedings and asked the Government to produce all its logs and other records concerning the taps.

The judge ordered both sides to appear tomorrow morning and argue on whether or not the case should be immediately dismissed because of the disclosure of the wiretaps and the fact that the contents had apparently vanished.

The defense said that because of the constitutional issues involved, it would like to argue also a judgment for acquittal that it hopes the judge will respond to with written rulings on the three blocks of counts outstanding against the defendants—espionage, theft and conspiracy.

This "puts a different posture" on the issues, the judge said. "It appears that Mr. Ellsberg was surveilled during the

most crucial period of the indictment, from the time of copying to the time of leaving Rand."

Dr. Ellsberg copied the Pentagon papers in October, 1969, and left the Rand Corporation in May, 1970.

The disclosure of the surveillance came in a memorandum filed with the judge by William D. Ruckelshaus, acting director of the F.B.I.

The burden is now on the Government to prove that the taped telephone conversations were not used to "taint" this case. If the Government cannot meet that burden, then as a matter of law the case against Dr. Ellsberg and Anthony J. Russo Jr. will be dismissed.

Mr. Ruckelshaus, in his memorandum, dated yesterday and made public today, said that on May 4 he "initiated an investigation to interview present and retired F.B.I. personnel for the purpose of determining, if possible, whether there had been any such taps."

He said that "last night"—Tuesday night—he received a "preliminary report" in which a former F.B.I. employe recalled that "in late 1969 and early 1970 Mr. Ellsberg had been overheard talking from an electronic surveillance of Dr. Morton Halperin's residence."

"It is this employe's recollection that the surveillance was of Dr. Halperin, and that Mr. Ellsberg was then a guest of Dr. Halperin," Mr. Ruckelshaus said.

Dr. Ellsberg said that it was conceivable that he talked about the Pentagon papers at that time on Dr. Halperin's telephone.

Dr. Halperin has been defense consultant and a defense witness in this case. At the time of the taps on his telephone, he was either a staff member of the National Security Coun-

Mr. Felt ✓
Mr. Baker _____
Mr. Callahan _____
Mr. Cleveland _____
Mr. Conrad _____
Mr. Gebhardt _____
Mr. Jenkins _____
Mr. Marshall _____
Mr. Miller, E. S. _____
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Ms. Herwig _____
Mr. Mintz _____
Mrs. Neenan _____

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P. [unclear]

Dr. Halperin left his position in the Defense Department in 1968 and became a member of the staff of the National Security Council. He left that post on Sept. 19, 1969, but remained a consultant until the following May.

The judge had set today for arguing motions to dismiss this case and for arguing defense motions for a verdict of acquittal, but he halted the proceedings before the arguments could start.

"It's impossible to proceed with the legal ramifications until the factual picture is clear," he said. "I need those answers for a factual picture. I want to know what occurred."

Mr. Petersen is the Assistant Attorney General.

He then told Leonard I. Weinglass, a defense attorney, that if he had any legal precedents for dismissing on this issue he should produce them as soon as possible.

On May 2, 1972, the judge ordered the prosecutor to produce all wiretap conversations involving the defendants in this case and their lawyers and their consultants, and he reiterated that order on July 7, 1972.

The judge's order included all electronic surveillance of Dr. Ellsberg, going back to Sep. 30, 1970, and all similar surveillance of Dr. Halberin, going back to Nov. 28, 1971, when he became a consultant to the defense.

Today's court session started with a great air of expectancy, with some defense attorneys believing that before evening Dr. Ellsberg and Mr. Russo would be freed of all charges.

The jury had been sent home until Monday, and so the judge allowed the overflow of news correspondents to sit in the 18 seats in the jury box.

Obscured in today's wire-tapping development was a turnover to the defense of a report on an F.B.I. interview with Charles W. Colson, former special counsel to President Nixon, which was dated May 8, 1973.

12 In it, Mr. Colson related that in early July, 1971, there were "kind of panic sessions" in the White House over the disclosure of the Pentagon papers in The New York Times on June 13, 1971.



United Press International

Dr. Daniel Ellsberg, right, and Anthony J. Russo Jr. talking to reporters in Los Angeles. They have asked that Judge William Matthew Byrne Jr. dismiss the Government's case.

FBI Interview

With Colson

Following is an FBI report of an FBI interview May 8 with Charles W. Colson:

Charles W. Colson, former special counsel to the President, was interviewed in the presence of his attorneys David Shapiro and Judah Best, in their offices at 1735 New York Avenue, N.W., Washington, D.C. Mr. Colson was advised he was being contacted at the request of the Department of Justice to determine if he could furnish information about an investigation conducted on behalf of the White House into the public disclosures of the Pentagon Papers and specifically for information he may have about an alleged burglary of the office of Daniel Ellsberg's psychiatrist by E. Howard Hunt and G. Gordon Liddy during the course of that investigation.

Mr. Colson voluntarily signed a waiver of rights... and advised as follows:

Mr. Colson recalled attending meetings in early July, 1971, at the White House concerning the disclosures of the Pentagon Papers and described these meetings as "kind of panic sessions" to determine what was going on and trying to establish what was going to be published next by the newspapers and the accuracy of those publications. Mr. Colson indicated he was not involved in the White House investigation into the Pentagon Papers disclosures, but was engaged in the government's litigation to stop publication of the

Papers. He was engaged on an almost full-time basis at this time with the preparation of the President's August 15 economics decision initiating Phase I of the price freeze.

When the Pentagon Papers were first published in The New York Times there was a need in the White House for someone to do research and coordinate assignments involving investigation into the leak. Colson recalled he recommended Hunt, whom he had known for a period of years and several other individuals for this assignment. Hunt was subsequently interviewed by John D. Ehrlichman, former assistant to the President. Later, Mr. Colson received a telephone call from Mr. Ehrlichman who was then in California with the President, asking whether Hunt could be brought in and directing that he should be put to work on the investigation.

Mr. Colson asked his staff secretary to process the necessary papers regarding the employment. Hunt was assigned to Colson's staff for internal budget processing only.

Mr. Colson knew that the "Plumbers" (publicly identified as Egil Krogh, David Young, Hunt and Liddy) were conducting a check for a personality profile of Daniel Ellsberg to determine what motivated him, what kind of "wild things" he might do. Mr. Colson said there was an enormous concern over leaks of sensitive information at that time.

Mr. Colson had no discussions or advance information of the alleged burglary. He knew the Plumbers were

going to the West Coast but did not know which of them would actually make the trip. He first heard about the alleged burglary sometime later at a meeting and he could not recall the time of the meeting or who was present. He thought the meeting may have been a private one with Mr. Ehrlichman. He believes Mr. Ehrlichman told him, he does not recall specifically, but he gained the impression from the conversation that "they" tried to get the records of Ellsberg's psychiatrist and did not get them. Ehrlichman told him this was a national security matter and not to be discussed with anyone. Mr. Colson never heard any discussion of a burglary attempt on the home of Ellsberg's psychiatrist.

Mr. Colson was asked if he had any other discussions with White House staff members about the burglary. He recalled in connection with the Watergate investigation prior to the time when he was questioned by the Federal Bureau of Investigation, and gave a deposition to Mr. Silbert of the United States Attorney's office, he asked John Dean, counsel to the President, what to do if the "Pentagon Papers question came up."

Dean told him that if asked, he was not to discuss the matter, inasmuch as it was a national security matter of the highest classification and that he (Dean) would interrupt such questions if present. He recalled receiving the same instructions from Mr. Ehrlichman in late March or April. He never discussed the burglary with Hunt or Liddy.

Concerning a current newspaper story that Hunt reportedly tried to talk to

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Mr. Colson sometime later about the burglary. Colson recalled a chance meeting with Hunt one morning in his outer office. Hunt was waiting for him but Mr. Colson could not recall when the meeting took place. Hunt told him that he was on his way to give a briefing on what "they" had learned about Ellsberg, and that he had about a half an hour before the briefing and he wanted to talk to Colson about it. Colson told Hunt he did not have time to talk to him then, that he was in a hurry. Hunt did not try to broach the subject matter again.

Concerning the memorandum from Colson to Jon Huntsman dated September 13, 1971, requesting in accordance with an earlier arrangement the reimbursement of Hunt for the following expenses: Air fares for two men from New York City to Washington, D.C., \$68.00; dinner check, Miami, \$35.85; Hotel bill for three men, Los Angeles, \$156.90, Colson advised as follows:

Colson furnished a copy of this memorandum from his own office files to the Federal Bureau of Investigation in the summer of 1972 when he was asked about Hunt's travel. This was the first occasion on which he had seen the memorandum and he did not know to what the entries on the memorandum related or the identity of the three men referred to in the memo. Colson never saw any of Hunt's vouchers or claims for reimbursement. These were initialed and submitted by Colson's secretary.

Concerning a recent news-

paper story according to which Egil Krogh reportedly said he requested funds from Colson for implementing the effort to acquire information about Ellsberg, Colson could not recall Krogh asking him for money for the trip to California. He has a vague recollection that at about that time Mr. Ehrlichman spoke to him about getting some funds, maybe for Krogh, but when he checked with Mr. Ehrlichman later, Ehrlichman could not recall the request.

From time to time Colson saw memoranda prepared for the White House group working on the Pentagon Papers investigation, but he saw no reports prepared by that group. The memoranda which were shown to him by Hunt because of Colson's general interest in the issue of the Pentagon Papers, spoke of Hunt's frustrations trying to get things done in the Plumbers' unit and Hunt's analyses of the investigation. Colson saw nothing related to the psychological study of Ellsberg. The normal channel for papers generated by the Plumbers was to Egil Krogh and David Young. Colson had no information about the whereabouts or results of investigation conducted by that group.

Colson had no knowledge of other illegal activities engaged in by the group conducting the Pentagon Papers investigation on behalf of the White House.

Krogh's 1969 Vow: 'Destroy' Nixon Foes

By Jean Heller
Associated Press

Esil (Bud) Krogh Jr., the Nixon administration official who resigned Wednesday amidst the Watergate-Pentagon Papers web of scandal, once threatened to destroy anyone who opposed President Nixon's policies.

The threat was made to a prominent doctor who had told Krogh he would not support legislation that would have created a permanent White House office to deal with narcotics traffic and drug abuse.

"Well, don't worry, Doc," Krogh is quoted as replying. "Anyone who opposes us we'll destroy. As a matter of fact, anyone who doesn't support us we'll destroy."

Krogh could not be reached for comment.

The doctor involved was Daniel X. Freedman, chairman of the department of psychiatry at the University of Chicago and well-known authority on psychopharmacology, the study of the effect of drugs on mental states.

In a telephone interview Wednesday, Freedman confirmed the 1970 incident and said that, while he doubted that the threat endangered him, he was uneasy about it for a long time.

"Maybe that's just the way these people talk," Freedman said. "I do think the language was excessive. I remember thinking at the

time that Krogh was referring to destruction of people in Congress who opposed the President rather than to destruction of me, but I was very uneasy about the thing for several years.

"I didn't want to get hurt nor did I want anyone associated with me hurt. I was so uneasy because I just couldn't be certain what he had in mind."

According to Freedman and several other sources who independently confirmed the story, the incident had its roots in 1969 when Mr. Nixon asked for, and the Senate unanimously passed, the Controlled Substances Act. The bill gave the Attorney General sole authority to decide what drugs were dangerous, who could use them and who could do research with them.

Freedman, as head of the Committee of Effective Drug Abuse Legislation, argued that the bill put too much power in one man's hands. The group, lobbying in the House, got the bill modified to say that the secretary of health, education and welfare would be included in those decisions.

Freedman said he knew Krogh as an aide to John D. Ehrlichman, special assistant to Mr. Nixon for domestic affairs.

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Colson Tells FBI — Of 'Silence' Orders

By Leroy F. Aarons
Washington Post Staff Writer

LOS ANGELES, May 16—Charles W. Colson, former special counsel to President Nixon, has revealed that he was ordered three times—twice by John Ehrlichman and once by John Dean—to keep quiet about the break-in into the office of Daniel Ellsberg's psychiatrist.

One of those occasions, Colson said, was during an official investigation into the Watergate affair. Another was just before the news broke last month that a special White House burglary squad had broken into the Beverly Hills office of the psychiatrist treating Ellsberg, co-defendant in the Pentagon Papers trial.

These latest revelations were contained in an FBI interview with Colson on Tuesday, made available to the defense today by Pentagon Papers trial Judge W. ~~Matt Byrne Jr.~~

Colson's statement provides strong indications that persons high in the White House had made the connection between the Pentagon Papers affair and the Watergate investigation and tried to suppress it.

The crux of what Colson, who resigned his White House job early this year, disclosed:

He knew the White House "plumbers squad" was working on the Pentagon Papers case—in fact he recommended Howard Hunt, the man who later led the burglary team, for his job with the special unit.

He did not learn about the burglary until "sometime later" at a meeting with Ehrlichman, who was then the President's domestic affairs adviser. At that time Ehrlichman told him, in the

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Silence on Ellsberg Break-In Ordered, Colson Tells FBI

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words of the FBI summary, "this was a national security matter and not to be discussed by anyone."

Still later, after the Watergate break-in last summer, and during the time the Justice Department was investigating Colson was called to give a deposition to U.S. Attorney Earl Silbert.

Colson said that before testifying he asked John Dean, then counsel to the President, what to do if the "Pentagon Papers question" came up.

Colson said Dean told him that if asked, "he was not to discuss the matter, as it was a national security matter of the highest classification and that he (Dean) would interrupt such questions if present."

Colson told the FBI "he recalled receiving the same instruction from Mr. Ehrlichman in late March or April, 1973."

That latter date apparently was just days before Ehrlichman summoned Judge Byrne to the Western White House on April 5 and discussed the offer of the FBI directorship.

Since news of the burglary and of Byrne's visit to the White House broke nearly two weeks ago, the defense in the Pentagon Papers trial has been maintaining that Ehrlichman knew the burglary story was about to come out and was attempting to influence Judge Byrne.

Colson's statement now confirms that the burglary issue was under active con-

sideration by Ehrlichman around that time. Byrne, who knew nothing of the burglary at the time, has said that he was in no way compromised by the offer and has refused to discuss it until after the trial.

Colson maintained in his four-page interview that he knew peripherally about the special White House squad, but did not take an active role personally. He told the FBI he knew that the "plumbers" were conducting a check for a personality profile of Daniel Ellsberg to determine what motivated him, what kind of "wild things" he might do.

He also knew, according to the FBI summary, that the plumbers were going to the West Coast, but did not know which of them would actually make the trip.

Colson told the FBI he "first heard about the alleged burglary sometime later, at a meeting and he could not recall the time of the meeting or who was present. He thought the meeting may have been a private one with Mr. Ehrlichman."

Colson said he remembered Ehrlichman telling him that "they tried to get the records of Ellsberg's psychiatrist and did not get them." It was at that undated meeting that Ehrlichman first warned Colson to keep the matter quiet.

Referring to pay vouchers showing that Colson authorized reimbursement to Hunt for airplane fare, meals and hotels, Colson said he never saw any of Hunt's vouchers but that

his secretary had initiated and forwarded them for payment.

Colson said that from time to time he saw memoranda prepared for the special White House squad, but never saw any reports prepared by the unit.

The FBI said "The memoranda which were shown to him by Hunt because of Colson's general interest in the issue of the Pentagon Papers, spoke to Hunt's Papers, spoke of Hunt's frustrations trying to get things done in the plumbers unit and Hunt's analyses of the investigation. Colson said nothing relating to the psychological study of Ellsberg."

There was nothing in the interview regarding grand jury statements by Hunt that Colson had urged him to forge State Department cables linking the John F. Kennedy administration with the assassination of South Vietnam Premier Ngo Dinh Diem. Hunt composed two phony cables in 1971 and passed the contents along to a reporter. The FBI report of the Colson interview did not say whether he had been asked about the cables.

Judge Byrne turned over three additional documents to the defense today. Two were memos from the Central Intelligence Agency, which has admitted it gave technical assistance to the burglary squad. Both memos were marked "secret." The third was a brief statement from Felipe de Diego, a Cuban who was part of the Hunt burglary team.

CIA documents disclosed that G. Gordon Liddy, another member of the team, later convicted with Hunt in the Watergate burglary, was given special CIA security clearance in December, 1969, "in connection with his employment by the Department of the Treasury."

At the time, the memo said, "Liddy was listed as member of the presidential task force reporting on narcotics, marijuana and dangerous drugs."

De Diego, interviewed the FBI, said he would full details on his role in the burglary if granted immunity from prosecution.

Young, Not Hunt, Sought Papers, Pentagon Says

A-11

Associated Press

A Pentagon spokesman reversed himself yesterday and substituted one former White House aide for another as the man who unsuccessfully sought access at the Defense Department to secret Pentagon Papers in the fall of 1971.

It was David Young, a resigned member of the National Security Council staff at the White House, and not convicted Watergate conspirator E. Howard Hunt, who personally wanted a look at the documents, spokesman Jerry W. Friedheim said.

While Young was turned down at the Pentagon, he arranged for Hunt to comb through cables at the State Department. Hunt has said in grand jury testimony that in 1971 he prepared two phony cables indicating

President John F. Kennedy was linked to the assassination of South Vietnamese President Ngo Dinh Diem in 1963.

Friedheim said another Watergate conspirator, G. Gordon Liddy, also made a personal visit to Pentagon counsel J. Fred Buzhardt, and was also turned down in his request for a peek at secret Vietnam-to-Washington communications.

Blaming the error on incomplete memories of Pentagon officials, Friedheim said, "We are not perfect."

Friedheim said the White House aides were turned down because of a standing Defense Department policy requiring that any request for information for government investigations come from the Justice Department.

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Correction A-11

The Washington Post incorrectly reported yesterday that Central Intelligence Agency Director James R. Schlesinger gave former FBI Director L. Patrick Gray III an account of its dealings with E. Howard Hunt in 1972. The account was not transmitted by Schlesinger, who had not yet joined the CIA, but by other officials of the agency. The Washington Post regrets the error.

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Colson Ends Bogus-Cable Denial

By CHRISTOPHER LYDON

Special to The New York Times

WASHINGTON, May 9—For more than 10 months, investigators and reporters have been searching for a connection between Charles W. Colson and the Watergate affair through his friendship with E. Howard Hunt Jr., one of the Watergate conspirators, who pleaded guilty.

This week, for the first time, Mr. Colson, who was special counsel until he left the White House staff in March, opened a small crack in his solid wall of denials.

Responding to Hunt's grand jury testimony, Mr. Colson suggested that a misunderstanding of something he said might have prompted Hunt to fabricate a diplomatic cable implicating President Kennedy in the murder of Ngo Dinh Diem, the President of South Vietnam, in 1963.

Mr. Colson said he never "ordered" Hunt to forge the document. But he no longer denied, as he had privately, that he had seen the bogus message or that he had been Hunt's supervisor on a project to establish official American complicity in Mr. Diem's assassination.

Well Connected Lawyer

Mr. Colson is an astute and well connected lawyer, who is expected to attract \$1-million a year in gross billings when he returns to private practice. Thus, he may have much to lose from any taint of the Watergate scandal.

Unlike many others loosely linked to the case, Mr. Colson has been categorical, both on and off the record, in denying all involvement.

And he is believed to be the only individual ever mentioned in connection with the matter who voluntarily underwent and passed a lie-detector test that asked about foreknowledge and even indirect participation in the Watergate raid.

Nonetheless, a sequence of earlier ventures indicates that Mr. Colson was well aware of Hunt's aptitude for clandestine and illegal activities when, early in 1972, he recommended to Jeb Stuart Magruder, the deputy manager of the Nixon reelection campaign, that Hunt's plans for intelligence and counter intelligence be given a hearing.

Mr. Colson, who made two appearances before the Watergate grand jury today, told Federal prosecutors earlier that in February, 1972, about the time the Watergate bugging plans were being hatched, he telephoned Mr. Magruder and urged him to listen to Hunt's ideas.

In one published account of Mr. Magruder's version of the conversation, Mr. Colson said, "When are we going to get this bugging plan approved?"

Mr. Colson has insisted that he never mentioned bugging and never knew it was part of the plan. Mr. Magruder's lawyer has said that the quoted version of the call may not be accurate, but the call itself is not disputed.

Nor is Mr. Colson's personal endorsement of Hunt to Mr. Magruder disputed. Two incidents before the call, and a third shortly afterward, indicate that Mr. Colson knew—long before the Watergate raid in June—that the wide range of Hunt's services included forgery, burglary and impersonation.

Hunt recently told the grand jury that in September, 1971, he directed a break-in at the Los Angeles offices of Dr. Lewis Fielding, a psychiatrist who had treated Dr. Daniel Ellsberg, whom the Government suspected of disclosing the Pentagon papers.

At that time and until Hunt left the White House staff in early April, 1972, his \$100-a-day consulting fees were being approved by Mr. Colson's signature on bi-weekly pay vouchers.

Testimony by Krogh

Egon Krogh Jr., a former White House aide who has taken responsibility for approving the Ellsberg burglary, has testified that \$2,000 in extra expense money for flights back and forth to Los Angeles was approved by Mr. Colson, but that Mr. Colson did not know how the funds were to be used.

Later, Hunt has testified, when he tried to recount the burglary story, Mr. Colson told him: "I don't want to hear anything about it." But about the same time, Mr. Colson confirmed in new grand jury testimony released today, he learned of the burglary from John D. Ehrlichman, then the chief domestic adviser to President Nixon.

According to documents released at Dr. Ellsberg's trial in Los Angeles, it was also about September, 1971, that Hunt forged the cable dealing with the Diem assassination.

Mr. Colson has not yet given his account of that project, but he has told William C. Lambert, a former investigative reporter for Life magazine, that he knew as early as February, 1972, that Hunt's cable was a fraud.

Mr. Colson had originally referred Mr. Lambert to Hunt for what was described as an explosive disclosure on the murder of Mr. Diem. Later, Mr. Colson and Mr. Lambert now say, Mr. Colson tried to discourage the reporter from pursuing the matter.

The third incident confirmed Mr. Colson's knowledge of Hunt's unorthodox work occurred in March, 1972—roughly a month after the call to Mr. Magruder, and three months before the Watergate arrests—

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when Mr. Colson dispatched Hunt, disguised by a red wig and heavy make-up, to the Denver hospital room of Dita Beard.

Mrs. Beard, a lobbyist for the International Telephone and Telegraph Corporation, had been quoted as the author of a memorandum linking the settlement of an antitrust suit against I.T.T. to a large I.T.T. contribution to the Nixon campaign. Shortly after Hunt's visit, Mrs. Beard denounced the memo as a fraud.

In Hunt's grand jury testimony last month, made available in Los Angeles Monday, Hunt says that Mr. Colson was "directing my researches" into the early stages of the war in Vietnam.

At one point, Mr. Colson asked him, Hunt said, "Well, what kind of material have you dug up on the files that would indicate Kennedy complicity?"

Hunt recalled that he showed Mr. Colson three or four legitimate cables "that indicated that they had pretty close to pulled the trigger against Premier Diem's head, but it didn't say so in so many words."

Mr. Colson then asked, "Do you think you could improve on them?" And Hunt "set about creating two cables which bore on this particular period."

When he showed them to Mr. Colson, Hunt said, "He seemed to like them" and shortly thereafter sent Mr. Lambert over to see them.

Mr. Colson responded to the published testimony by saying that he had not ordered Hunt at any time to falsify any documents.

He added: "From what I have read of Mr. Hunt's statements, it is entirely possible that Mr. Hunt misunderstood something I said to him at the time he was reviewing Pentagon papers cables with me."

Within hours after the Watergate raid on June 17, 1972, according to sworn depositions in the case, John D. Ehrlichman, then President Nixon's domestic counselor, called Mr. Colson to ask about Hunt's whereabouts. Mr. Colson responded that he had not been in touch with Hunt for months.

Sources close to Mr. Colson have said that rather than checking on Hunt's recent activities, Mr. Colson took immediate precautions against any further communications with Hunt that might entangle him in the affair.

Mr. Colson's name came up early and often, however, in the early speculation about Watergate conspirators. Quite apart from the Hunt connection, he was well known to the press and to many on the Nixon political staff as the source of many secret and controversial campaign stratagems.

Even after the Watergate arrests, he continued to foster that reputation. In a staff memorandum published in The Washington Post, Mr. Colson eagerly confirmed late in August last year that "I would walk over my grandmother if necessary" to re-elect the President.

'Dirty Tricks'

It was already widely known that in 1970 he had helped Mr. Lambert research a Life magazine article that charged Senator Joseph D. Tydings, Democrat of Maryland, with conflict of interest and apparently contributed to Mr. Tydings's defeat.

More recently, mingled among the Watergate revelations, there have been numerous fresh reports of Mr. Colson's 1972 campaign of "dirty tricks." Lyn Nofziger, formerly an official of the Republican National Committee, said last week that he had rejected a number of Colson campaign ideas that ranged, he said, from "dangerous" to "idiotic," but were not illegal.

Mr. Colson himself has boasted to friends that he had spies reporting to the Nixon campaign from each of the major contenders for the Democratic Presidential nomination last year. He has always added, however, that he was sure the Democrats had their spies in the Republican organization, too.

Last month, when it was first reported that the Nixon campaign had paid \$4,400 for an advertisement in The New York Times purporting to represent "citizens" in support of the President's decision to mine Haiphong harbor last May, the head of the Nixon advertising staff said that Mr. Colson had conceived and written the ad. Mr. Colson did not bother to deny the statement.

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No Advance Information

Mr. Colson had no discussion or advance information of the alleged burglary. He knew the plumbers were going to the West Coast but did not know which of them would actually make the trip.

He first heard about the alleged burglary sometime later at a meeting, and he could not recall the time of the meeting or who was present. He thought the meeting may have been a private one with Mr. Ehrlichman.

He believes Mr. Ehrlichman told him, he does not recall specifically, but he gained the impression from the conversation that "they" tried to get the records of Ellsberg's psychiatrist and did not get them. Ehrlichman told him this was a national security matter and not to be discussed with anyone. Mr. Colson never had any discussion of a burglary attempt on the home of Ellsberg's psychiatrist.

Mr. Colson was asked if he had any other discussions with White House staff members about the burglary. He recalled in connection with the Watergate investigation prior to the time when he was questioned by the Federal Bureau of Investigation and gave a deposition to Mr. Silbert of the United States Attorney's office. He asked John Dean, counsel to the President, what to do if the Pentagon papers question came up.

Dean told him that if asked he was not to discuss the matter, inasmuch as it was a national security matter of the highest classification, and that he [Dean] would interrupt such questions if present. He recalled receiving the same instructions from Mr. Ehrlichman in late March or April, 1973. He never discussed the burglary with Hunt or Liddy.

A Chance Meeting

Concerning a current newspaper story that Hunt reportedly tried to talk to Mr. Colson sometime later about the burglary, Colson recalled a chance meeting with Hunt one morning in his outer office. Hunt was waiting for him, but Mr. Colson could not recall when the meeting took place.

Hunt told him he was on his way to give a briefing on what "they" had learned about Ellsberg, and that he had about a half an hour before the briefing, and he wanted to talk to Colson about it. Colson told Hunt he did not have time to talk to him then, that he was in a hurry. Hunt did not try to broach the subject matter again.

Concerning the memorandum from Colson to Jon Huntsman dated Sept. 13,

1971, requesting in accordance with an earlier arrangement the reimbursement of Hunt for the following expenses: Air fares for two men from New York City to Washington, D.C., \$63; dinner check, Miami—\$35.85; hotel bill for three men, Los Angeles—\$156.90, Colson advised as follows:

Colson furnished a copy of this memorandum from his own office files to the Federal Bureau of Investigation in the summer of 1972 when he was asked about Hunt's travel. This was the first occasion on which he had seen the memorandum, and he did not know to what the entries on the memorandum related or the identity of the three men referred to in the memo.

Colson never saw any of Hunt's vouchers or claims for reimbursement. These were initiated and submitted by Colson's secretary.

Concerning a recent newspaper story according to which Egil Krogh reportedly said he requested funds from Colson for implementing the effort to acquire information about Ellsberg, Colson could not recall Krogh asking him for money for the trip to California.

He has a vague recollection that about that time Mr. Ehrlichman spoke to him about getting some funds, maybe for Krogh, but when he checked with Mr. Ehrlichman later, Ehrlichman could not recall the request.

From time to time Colson saw memorandum prepared for the White House group working on the Pentagon papers investigation, but he saw no reports prepared by that group. The memoranda which were shown to him by Hunt because of Colson's general interest in the issue of the Pentagon papers spoke of Hunt's frustrations trying to get things done in the plumbers' unit and Hunt's analysis of the investigation.

Colson saw nothing related to the psychological study of Ellsberg. The normal channel for papers generated by the plumbers was to Egil Krogh and David Young. Colson had no information about the whereabouts or results of investigation conducted by that group.

Colson had no knowledge of other illegal activities engaged in by the group conducting the Pentagon papers investigation on behalf of the White House.

C.I.A. Report

Question: Did we have any other dealings with Liddy

while he was in the Treasury or the White House?

Response: We did not have any prior dealings with George Gordon Liddy in an operational sense. Our records do reflect, however, that in December, 1969, security action was initiated to grant Liddy a number of agency special clearances in connection with his employment by the Department of the Treasury. At that time, Liddy was listed as a member of the Presidential task force reporting on narcotics, marijuana, and dangerous drugs.

In August, 1971, Mr. George Gordon Liddy was briefed on several additional sensitive programs in connection with his assignment to the White House staff. Memos prepared in August and September, 1971, indicate that Liddy was

working with Mr. David R. Young to investigate leaks of classified information to the news media. Liddy was debriefed of these special clearances on 22 February 1972. In effect, Mr. Liddy held agency clearances because of his White House duties, but he was not utilized by C.I.A.

Question: H. More details are desired about the tape recorder and the miniature camera which apparently Hunt had secured from the agency sometime in August, 1971.

Answer: All the details about the tape recorder are contained in Item G. On 25 August 1971 Mr. Hunt was furnished with a commercial Tessina camera disguised in a tobacco pouch. At Mr. Hunt's request, an unidentified associate was also given support material and documents. These items were provided to him on the understanding that they were required in connection with his official duties.

The agency is not aware of the purpose for which these items were intended or used. The agency refused a request to assist actively by providing a backstopped address and phone contact. On 27 August 1971 Mr. Hunt, on arrival from California, returned the concealed Tessina camera as unsuitable for his use. He requested that a roll of undeveloped film be developed for him immediately. He was met later the same day and given the developed prints and film.

At this point, the agency determined that Mr. Hunt's requests for agency support had escalated to an unacceptable level, and no further agency contact with or assistance to Mr. Hunt of any sort occurred after August, 1971.

CARL T. ROWAN

CIA's Involvement Appalling

Several days after the Watergate burglary of last June 17 my wife and I went to a screening party at the Motion Picture Association headquarters here. We chanced to sit beside Richard Helms, then director of the Central Intelligence Agency, and his wife Cynthia.

The pre-film conversation turned to Watergate.

"This Watergate thing is so ridiculous that if you wrote it as fiction the publisher would laugh you out of his office," Cynthia said.

Helms laughed and, in the course of a brief discussion, dropped one comment that, as my close friends know, has bothered me ever since.

"Cynthia and I had been up late and had just fallen asleep when they telephoned me to tell me that these fellows had been arrested in the Watergate," he said.

"Why," I asked myself and my friends for months, "would anyone call the CIA director in the wee hours of the morning about some arrests in a burglary unless the CIA was involved?"

But I just couldn't write about that remark. I couldn't prove CIA involvement in Watergate, and I didn't want to believe the CIA was involved in this kind of political crime. So the most I could bring myself to write was this, on August 6, 1972:

"The previous employment of several of those involved in the Watergate caper and recent

strange revelations of big money floating into bank accounts out of nowhere have aroused some serious misgivings that the Central Intelligence Agency was involved. But for what reason? Not partisan political purposes surely."

I guess I wasn't cynical enough or mean enough to put my larger suspicions into print. I truly regret that bit of cautiousness.

Well, the chilling truth is now out. The CIA has become involved in political crime as ordered by the White House and that is a sinister development that overshadows everything else that has gushed forth from this cesspool we call Watergate.

E. Howard Hunt, the convicted Watergate burglar and ex-CIA agent (and who knows when if ever he became an "ex" agent?), has testified that the CIA provided cameras, disguises, false papers and other assistance when he and G. Gordon Liddy burglarized the office of the psychiatrist of Daniel Ellsberg, now on trial in connection with the Pentagon papers.

The New York Times has reported that the CIA role was approved by Gen. Robert E. Cushman Jr., Helms' deputy and now the Marine Corps commandant.

How can I interpret Helms' comment at that movie party in the light of these recent disclosures?

I can only conclude that the CIA was up to its arm-

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pits in the dirty work masterminded by Hunt and Liddy, in the Ellsberg case but also in the Watergate crime. I can only conclude that this vast organization with all its secret money, all its capacity for eavesdropping and other dirty tricks, was turned into an apparatus for perpetuating the power of Richard Nixon and his cronies.

You can bet that this kind of corruption of the purpose of the CIA was not taken lightly by Helms (and do not believe for a moment that Lushman approved this frightening gambit without Helms' knowledge). I can damn well guarantee you that the CIA became involved only on direct orders from the President, or orders from Haldeman or Ehrlichman, claiming to speak directly for the President.

In either case, no presidential assistants or appointees such as Helms would undertake so serious a violation of the intended role of the CIA without assurances of presidential knowledge and approval.

So that old campaign button finally speaks the truth: "NIXON'S THE ONE."

There is a question that hounds us all, and the answer is almost unspeakable except in private surroundings. When a president is riding the top of the world, hogging the glory and the headlines with reelection virtually assured, why resort to such malevolent police state tactics? It defies rational explanation.

Cuban Says He and Two Others Broke Into Psychiatrist's Office

Special to The New York Times

MIAMI, May 10—A Cuban real estate broker, in a deposition here today, said that he and two Watergate burglars, Bernard L. Barker and Eugenio R. Martinez, broke into the office of Dr. Daniel Ellsberg's former psychiatrist last September and photographed Dr. Ellsberg's and "other files."

Felipe de Diego made his deposition this morning before the Dade County State Attorney, Richard E. Gerstein, who interrogated him under oath at the request of the Los Angeles County District Attorney, Joseph Busch.

Mr. Busch authorized Mr. Gerstein to give the 45-year-old Cuban immunity from prosecution for any illegal actions he might have committed in Los Angeles County.

The Dade prosecutor, who conducted the questioning with his chief investigator, Martin Dardis, said that Mr. de Diego had been "frank and forthright."

Mr. Gerstein said that Mr. de Diego's lawyer, Alfredo Duran, had indicated that if his client was given immunity from prosecution in other jurisdictions, he might "shed new light" on heretofore unexplained activities of the Watergate operation.

Break-In at Embassy

Sources close to the investigation suggested that Mr. de Diego might be able to give information about an alleged break-in at the Chilean Embassy in Washington in May or June, 1972, among other things.

Barker and Martinez are among five persons who pleaded guilty at their trial in Washington in connection with the break-in and bugging of the Democratic National Committee headquarters in the Watergate complex. Two others were convicted.

Dr. Ellsberg and Anthony J. Russo Jr. are on trial in Los Angeles in connection with the disclosure of the secret Pentagon papers on the history of the Vietnam war. The burglary of the psychiatrist's office has become an issue in the trial.

According to Mr. Gerstein and Mr. Dardis, the thread of Mr. de Diego's testimony was as follows:

late last August, Mr. de

Diego was asked by Barker, for whom he then worked, to participate in a "mission for an agency of the United States Government."

He was also told by Barker that the man in charge of the mission was E. Howard Hunt, Jr., who also later pleaded guilty in the Watergate case. Mr. de Diego, who said he once worked for the Central Intelligence Agency and knew Hunt, agreed to join Barker.

Four days later, apparently on Sept. 2, Mr. de Diego, Barker and Martinez, who also then worked for Barker, flew from Miami to Los Angeles. Barker bought their airline tickets, giving fictitious names, which they also used to register at the Beverly Hilton Hotel.

Next morning the three men made visual reconnaissance of the building where Dr. Lewis J. Fielding, Dr. Ellsberg's psychiatrist, had his offices.

Suitcase Put in Office

At one point that day, Barker left his companions at the hotel and returned shortly with a briefcase that contained photographic equipment, a spotlight, a 35-mm. camera, films and other items.

At 9 P.M. the three went into the office building and spoke Spanish to a cleaning woman, apparently of Mexican descent. The persuaded her to put the suitcase into Dr. Fielding's office, and they left the building, Mr. de Diego said.

Four hours later, at 1 A.M., using masking tape and a glass cutter, they broke a window and entered an office on the ground floor and forced the door of Dr. Fielding's office on the second floor, the witness continued.

Barker, he said, then told his two companions, "We are looking for a file of Dr. Daniel Ellsberg." Mr. de Diego said he did not remember who had found the file, but shortly afterward the search stopped and he helped to hold papers from what appeared to be Dr. Ellsberg's file while Martinez photographed them.

Mr. de Diego said that he had not been paid for the Los Angeles operation, but he added that Barker had promised he would be paid for other operations.

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Nixon Reorganization

Trend Toward Central Power Curbed: Other Key Questions Left Unanswered

By R. W. APPLE Jr.
Special to The New York Times

WASHINGTON, May 10 —

President Nixon's latest reorganization of his Administration completes the demolition of the so-called "Berlin wall" that surrounded him during his first term. And, at least in theory, it reverses the trend toward concentration of power in the hands of a favored few within the White House that has distinguished Mr. Nixon's presidency.

News

Analysis

The architects of the "wall," which so outraged Republican politicians, members of Congress and even Cabinet officers, were H. R. Haldeman and John D. Ehrlichman. They are gone, victims of the Watergate scandal.

At least three of the Haldeman and Ehrlichman protégés sent out into the bureaucracy to act as White House agents have also been forced out of Federal service by the scandal — Egil Krogh Jr., Jeb Stuart Magruder and Gordon Strachan.

Now the super-Cabinet jobs, another creation of Mr. Haldeman and Mr. Ehrlichman, which also served to weaken the departments and strengthen the White House, have been discarded. The Cabinet members have been assured by the President that they will be listened to in the future and that they will even get to talk to Mr. Nixon.

But there is still no real assurance that President Nixon will be any more accessible in the remaining 44 months of his term than he has been these last 52.

Life of a Loner

Partly for physical reasons (he lacks stamina) and partly for psychological reasons (he detests arguments and is loath to deliver criticism personally), Richard Nixon has a life-long habit of isolation. Unlike his five immediate predecessors, he is a loner, a man who draws no sustenance from contact with a large circle of friends and acquaintances.

After more than a quarter-century of public life, his ability or desire to change his style of life is questionable.

A salient example is Mr. Nixon's choice of men to plug the holes left in his staff and Cabinet by the Watergate case. Another man might have concluded that the old system had failed him and that new sorts of aides were needed; another man might have concluded that the introduction of outsiders into the inner circle of the Administration would provide a useful symbol of reassurance to the public that things were changing.

But not Mr. Nixon, who is pictured by those who know him best as extremely nervous about "untested" advisers.

If he has sought new blood, he has not been able to find it. Instead, he has played a high-level game of musical chairs, shifting men from one job to another as vacancies developed through resignations.

Thus, Elliot L. Richardson — who had served as Under Secretary of State, Secretary of Health, Education and Welfare, and Secretary of Defense — becomes Attorney General-designate. James R. Schlesinger — who had served in the Budget Bureau, as chairman of the Atomic Energy Commission, and as Director of Central Intelligence — becomes Secretary of Defense-designate.

Other gaps are filled by Leonard Garment, J. Fred Buzhardt Jr., William C. Colby, John B. Connally and Gen. Alexander M. Haig Jr. — Administration loyalists to the last man.

There are even reports that Henry A. Kissinger, Mr. Nixon's national security adviser, will be named Secretary of State, and that the President's old confidant Secretary of State William P. Rogers will join the White House staff.

No one in Washington, or at

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least very few people question the ~~integrity~~ and competence of such men as Mr. Richardson and General Haig. But many doubt that Mr. Nixon has really cleaned house, and the city is full of jokes about "the movable Brahmin" (Mr. Richardson).

In a number of instances, moreover, there are nagging President, such as:

On Mr. Richardson: Can the special prosecutor Mr. Richardson is to appoint be truly independent if Mr. Richardson makes the ultimate decisions on such matters as immunity?

On General Haig: Is it appropriate, or even lawful, for the President to move a general on active duty into the White House to perform many of Mr. Haldeman's duties?

On Mr. Connally: Can the former Treasury Secretary, who will continue to retain his long list of wealthy clients, including several in the oil industry, give the President impartial counsel on domestic and foreign policy matters that may affect them, particularly at a time when the energy crisis looms so large?

On Mr. Buzhardt: Can a man heavily involved in the pentagon papers case as general counsel to the department of the Army make dispassionate determinations in the Watergate case, with which the Pentagon papers case is intertwined?

A large number of Republican representatives and Senators had hoped that Mr. Nixon would turn to someone not only independent of the Administration but known for political savvy, such as representative John Rhodes of Arizona, chairman of the House Republican Conference. They have been rebuffed.

In sum, many here believe, the President, badly in need of a dramatic stroke to restore the public confidence that the polls show to be ebbing from his Administration, has not found it yet.

MARY McGRORY

Nixon Is Hit Where He Lives

The House of Representatives, playing Brutus to Richard Nixon's Caesar, dealt him "the unkindest cut of all" on a day of murderous slashes.

They told him to stop bombing Cambodia. It was the first Southeast Asia policy setback any president has sustained in the House in 10 years. No VFW post has supported Nixon more unquestioningly in whatever violence was afoot — bombings, minings, invasions.

His present domestic difficulties were not mentioned. He was, for the most part, reverently referred to as the Commander-in-Chief, whose hands should not be "tied," from under whom the rug should again not be yanked "precipitately."

In the cloakrooms, the Republicans murmured that it was "not the time" to let the President down. But blind trust has gone out of style.

The day had brought the indictments of two of his former Cabinet officers, John Mitchell and Maurice Stans, a pair he pointedly praised on election night. The Ellsberg trial had yielded up another of its routine sensations: An FBI bug on a former White House security aide. The President's former counsel, John W. Dean III, issued another scream about liars lately at large around the Oval Room.

The Democrats had suggested, and no flip-charts were needed, that the moment had arrived to let Richard Nixon know that the House of Representatives is not his obedient servant, but actually a branch of the government.

The debate was a regurgitation of 10-year-old arguments. One more time, the hawks pleaded, we should bomb for peace. They shouted that the Communists — some of whom are now Richard Nixon's best friends — are "testing us." Delicate negotiations will be imperiled. The world is watching.

But they had lost their prized pawns, the troops and the prisoners. And the doves had picked up a valuable ally in Speaker Carl Albert, newly awakened to the witlessness of using B52s as ambassadors to prop up a regime the administration privately admits is going to collapse anyway.

"Join not the multitude to do evil," cried George Mahon of Texas, chairman of the House Appropriations Committee and, until that hour, as feared in the House as Richard Nixon.

"Why not give him a little more time?" he begged.

But time is running out for Richard Nixon. When the tallies flashed on the new scoreboard on the walls, the doves cheered like basketball fans tasting their first victory. Thirty-six Republicans were among the 219 who told Richard Nixon that he couldn't "transfer" Defense Department funds to finance the current round of slaughter from the air.

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The President is also running out of men. His acute personnel shortage was being illustrated at the time the vote was taken. Elliot Richardson the square-jawed Yankee with the flexible principles, has been frantically switching from his barrister's gown as attorney general-designate to his brass hat as Defense secretary.

While he was dancing on the head of a pin with the Senate Judiciary Committee about his new duties as the supervisor of the special Watergate prosecutor, he was being quoted on the House floor as the Pentagon chief who needed a show of strength. If he is as tough on the Watergate as he has been on the war, Nixon officials will be blown up as relentlessly as Asian peasants.

At the White House, the President was shuffling the cards again, and putting old faces in new places. John Connally will be a White House counselor, and seems cast in the role of the Angel of Dien Bien Phu to tend the wounded and hearten the general in the surrounded fortress. Running for the White House from inside the water-logged Executive Mansion is a dubious venture, but Connally had no choice.

The President has rearranged around him the same kind of hard-nosed, cold-eyed men who got him in trouble in the first place. If he is a chastened man his choices do not say it.

J. Fred Buzhardt, the Pentagon counsel, was ferried over the river to become a special adviser on the Watergate. Buzhardt flatly refused to give a Senate committee the rules of engagement in the air war.

William E. Colby, now in state, the prospective CIA director, was the operator and defender of the infamous Phoenix program in Vietnam, a system of political assassination. James Schlesinger, who leaves CIA to become Defense secretary, will be questioned about Watergate defendant James McCord's allegations that Watergate was supposed to be palmed off as a CIA operation.

Richardson, speaking as secretary of Defense several days ago, had informed the House, with the contempt of Congress that is the mark of the true Nixonian, that it did not matter how they voted, that the Cambodian bombing would go on.

But it matters to Richard Nixon. It is a signal that the long spell has been broken. He was hit where he lives, in foreign policy. In fact, the only encouragement he gets these days is from abroad, from countries who tell us it would be a mistake to cancel Richard Nixon's grand design for running the world just because he couldn't handle the corruption that has all but inundated the Oval Room and made his presidency almost as vulnerable as Lon Nol's.

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**Former CIA Boss
 May Return to Talk**

Former Central Intelligence Agency Director Richard M. Helms is expected to return from Teheran next week to testify before a congressional subcommittee investigating CIA involvement in the Pentagon Papers case.

The Senate Appropriations Subcommittee on Intelligence, headed by John L. McClellan (D-Ark.), also intends to hear testimony by the Marine Corps Commandant, Gen. Robert E. Cushman, at noon today. He is a former deputy director of the CIA.

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Project Made 2 'Apprehensive'

By MARJORIE HUNTER

Special to The New York Times

WASHINGTON, May 10—

Two medical officials of the Central Intelligence Agency told a Senate subcommittee today that a "personality assessment" made on Dr. Daniel Ellsberg was the first that the agency had ever made on an American citizen.

The agency has been conducting such personality studies for many years, the officials said, but only of foreign leaders.

The testimony was given by Dr. John R. Tietjen, director of medical services for the C.I.A., and Dr. Bernard Malloy, chief of the agency's psychiatric division, at a closed meeting of a Senate Appropriations subcommittee inquiring into the involvement of the agency in the burglary at the office of Dr. Ellsberg's former psychiatrist.

The doctors, questioned as they emerged from the meeting, said that so far as they had been able to determine, the Ellsberg personality assessment was the only one the agency had ever made on an American.

They declined to answer further questions posed by newsmen. No transcript of their testimony was made available.

However, Senator John L. McClellan, chairman of the Senate Appropriations Committee and of the subcommittee conducting the inquiry, said later that the agency's doctors had testified that "they were apprehensive throughout the project" and had mentioned these doubts to their superiors, including the Director and Deputy Director of the C.I.A.

Said to Have Had Doubts

Richard M. Helms, now Ambassador to Iran, was the agency's director at the time of the Ellsberg personality assessment in the summer and fall of 1971, and Gen. Robert E. Cushman Jr., now commandant of the Marine Corps, was the Deputy Director.

Senator McClellan, Democrat of Arkansas, said that the committee considered it essential to hear from both Mr. Helms and General Cushman "at the earliest time possible."

General Cushman has cut short a European tour and is expected to testify tomorrow before a Senate Armed Serv-

ices subcommittee, headed by Senator Stuart Symington, Democrat of Missouri. That committee is also inquiring into C.I.A. involvement in the Pentagon papers case.

Senator McClellan said that he had asked the State Department to contact Ambassador Helms about appearing "and we hope to hear his testimony next week—early next week, I might add."

The chairman had indicated earlier that the subcommittee might also want to question John D. Ehrlichman, who resigned as President Nixon's chief domestic adviser last week as disclosures of White House involvement in the Watergate scandal were unfolding.

White House involvement in the preparation of the Ellsberg personality assessment was officially confirmed yesterday by the C.I.A. director, James R. Schlesinger. He told the McClellan subcommittee that David R. Young, Jr., a White House aide at the time, had asked the agency to prepare such a report on Dr. Ellsberg in the latter part of July, 1971.

Dr. Ellsberg is on trial in Los Angeles on Federal charges of theft, espionage and conspiracy involving the copying and alter disclosure of the Pentagon papers on United States involvement in Vietnam.

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Helms' Approval Reported

Mr. Schlesinger testified that Mr. Helms, then the C.I.A. director, had instructed officials of the agency to work with Mr. Young and that the agency's decision to prepare the Ellsberg study "apparently" was approved by Mr. Helms."

Mr. Schlesinger said that two profiles on Dr. Ellsberg were prepared and sent to the White House. He said that the first had been compiled from "raw material" such as newspaper and magazine articles and Government documents supplied by Mr. Young. This material, he said, "was judged insufficient" by the White House.

Additional material, including classified information from the Justice and State Departments, was given to the agency, according to Mr. Schlesinger, and the final document was delivered to the White House by Dr. Malloy on Nov. 12, 1971.

"Agency records indicate that Mr. Helms had previously communicated with Mr. Young, indicating he had read both reports," Mr. Schlesinger testified.

'A Serious Impropriety'

The intelligence agency has admitted furnishings disguises and other materials used by E. Howard Hunt Jr., a former White House aide who has confessed a role in the burglary of the psychiatrist's office in the fall of 1971.

Asked today if he felt that the agency had violated the law, Senator McClellan replied: "I would not make a final decision on that. But it was, to say the least, a serious impropriety."

The C.I.A.'s charter, the National Security Act of 1947, stipulates that the agency "shall have no police, subpoena, law-enforcement powers or internal security functions." Internal security, espionage and sabotage are under the jurisdiction of the Justice Department.

REVIEW and OUTLOOK

Watergate and the Press

Senator Proxmire, Vice President Agnew and others have criticized the press for printing hearsay about Watergate, and while we think the charges careless and misdirected, they are worth some attention for a couple of reasons.

For one thing, there may be some legitimate issues buried in the complaints, and there is a danger they might be overlooked. Watergate has been a decisive defeat for the administration critics of news coverage, and this has left the press in a self-congratulatory mood. (Though the credit should go less to the press generally than to The Washington Post specifically.) In fact, it seems to us that Watergate, in particular the John Dean accusations cited by Senator Proxmire, provide examples of both good and bad media performance.

Both Time and Newsweek reported this week that Mr. Dean is ready to say the President knew of the Watergate cover-up. Newsweek put out an advance press release on this story last Saturday, and this became the basis of stories elsewhere. Very little is proved by the direct quotations in the articles—that the President told Mr. Dean he was doing a “good job.” The rest is Mr. Dean’s interpretation, and here the cardinal fact is that he is a suspect source because he is trying to persuade the prosecutors to grant him immunity.

In fact, investigators who have heard the whole story are now reported to say he has no evidence against the President, and Mr. Dean has said these reports were part of an attempt to “get me.” But what was the responsibility of the press last weekend, when all it had before it was the initial Dean allegations?

Surely this responsibility is to give the reader the full story, or in other words to put the allegations in a context that shows their suspect nature and relegates to them a corresponding importance. A model, it seems to us, was the coverage provided by The New York Times. It reported the charges on page 41 of its Sunday edition. Both its

Sunday story and a follow-up on Monday were carefully framed to put the charges in a proper context. They were full of remarks like “The phrase ‘to keep the lid on’ is apparently Mr. Dean’s.”

The Washington Post played the story on its front page Sunday, but not as its most prominent story and not nearly as prominently as other Watergate stories on other days. The second paragraph carefully pointed out the key fact that the statements had been made while negotiating for immunity. Time and Newsweek both also provided a full context for their stories. Newsweek said that Mr. Dean’s story was “a self-serving tale, tailored to give Dean minimum exposure to criminal charges and maximum leverage

in haggling for immunity.”

It seems to us that this kind of coverage, far from being subject to criticism, sets a standard of excellence in reporting sensitive developments. Unfortunately, there were other places where the standard was not met, particularly on television.

Newsweek’s press release merely repeated Mr. Dean’s charges, leaving out the cautions and qualifiers of the Newsweek article. The Times and Post had to supply their own context. But both the NBC Saturday night news and some local shows reported the Dean charges at face value. Similarly, the archives of network news at Vanderbilt University show that none of the three networks mentioned Mr. Dean’s interest in immunity while reporting skeptically on the President’s denial of the Dean charges on Monday. Here is where Senator Proxmire should look if he wants to criticize the handling of the charges.

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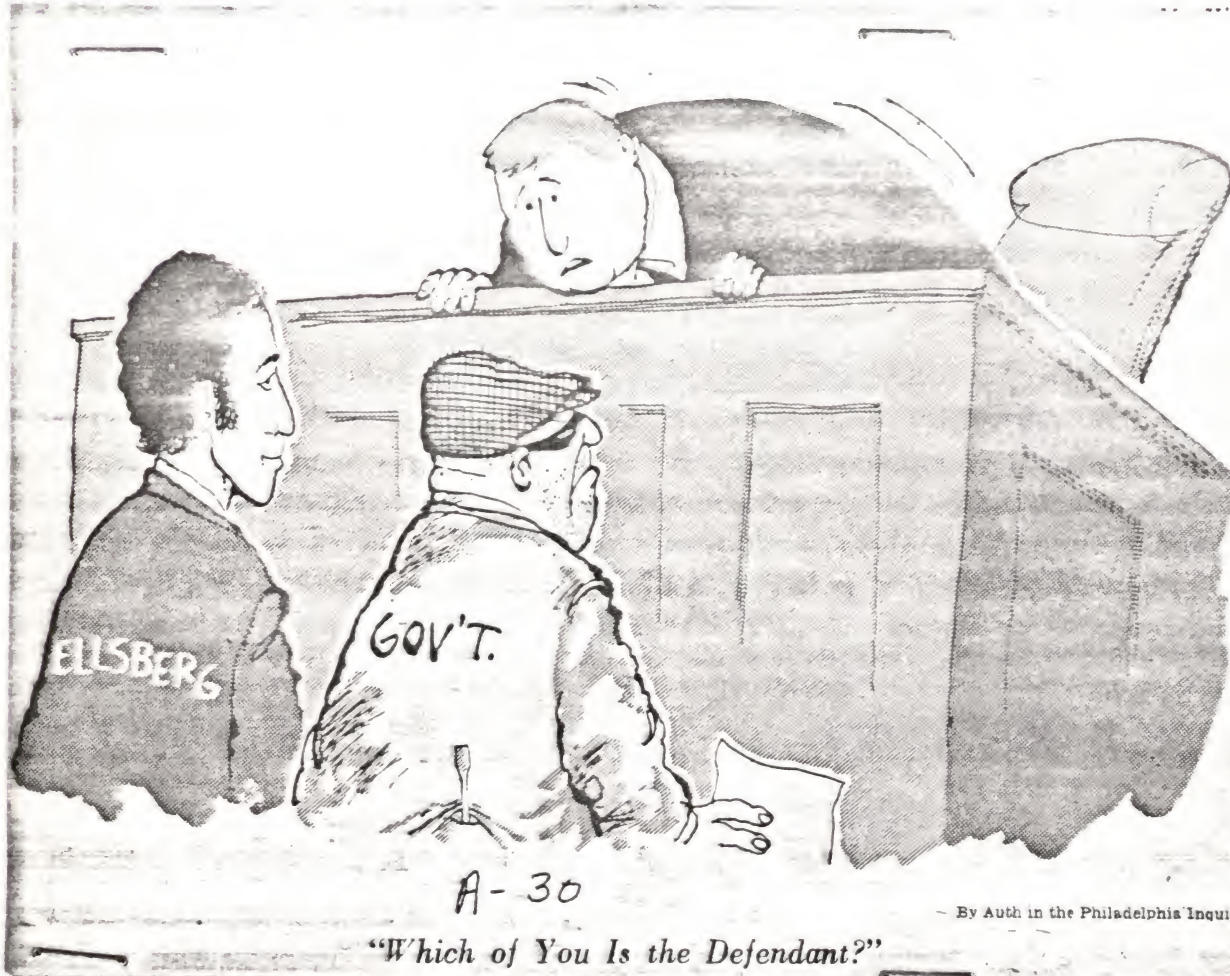
But we are inclined to doubt—to come to the second reason for talking about this dispute—that Senator Proxmire ever was primarily interested in media performance per se. Reading the colloquy he held with Senators Scott, Mansfield and Byrd, it's obvious their underlying fear was that the public would prejudge the President's complicity in Watergate before the facts were in. These columns have expressed the same concern, but especially in view of the care taken by the Times and Post and others, we see no reason why it should be specifically directed at the press.

It turns out, after all, that Senator Proxmire was privately prejudging the case himself in conversations with a Wisconsin editor. Even before the Dean allegations, similarly, pollsters were finding that a high proportion of the public felt the President knew of the wrongdoing. In other words, what Senator Proxmire's speech showed was how easy it is to make the press the focus-point of broader social developments, to blame it for what the broader society is doing.

Finally and generally, the whole Watergate case is surely an example of why the press is important to a free society. With due respect for Judge Sirica's persistence in breaking down those convicted in the break-in, it's doubtful that the story of the scandal would ever have come out as completely as it is now coming out if there had been no Washington Post.

Surely there is a place for the carefully contrived rules of the courtroom, but Watergate should be a warning to those who would impose those rules on the press as well. The case clearly shows there is also an important place for the free marketplace of ideas, for those who see their task as getting whatever facts they can and getting them as quickly and openly as possible before the public.

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Ellsberg Burglary Team Member Says Psychiatric File Photographed

Felipe de Diego, a member of the team which broke into the Los Angeles office of Daniel Ellsberg's psychiatrist, has testified that the burglary produced photographs of the contents of Ellsberg's psychiatric file. United Press International reported yesterday.

The testimony, given in Miami to a prosecutor at the request of the Los Angeles district attorney's office, conflicted with testimony last week by convicted Watergate conspirator E. Howard Hunt to a grand jury in Washington.

Hunt's testimony, divulged at Ellsberg's Pentagon Papers trial, was that the Sept. 3, 1971, entry into the office of Dr. Lewis Fielding produced nothing.

Hunt told the grand jury here that despite a thorough search of every file in Dr. Fielding's office no Ellsberg file was found. He said the failure of the mission was later reported to former White House aide Egil Krogh, who had authorized the break-in.

De Diego's conflicting testimony was disclosed at a news conference in Miami yesterday by Dade County State Attorney Richard Ger-

stein, who said the witness testified freely after being granted immunity for any Los Angeles crime.

De Diego testified that he was told the team was on a national security mission when it went to Los Angeles with Watergate conspirators Bernard L. Barker and Eugenio Martinez. Hunt was checking the doctor's Beverly Hills home to guard against discovery when the break-in began.

De Diego testified that the two went to Fielding's office equipped with photographic equipment. De Diego said Martinez found Ellsberg's file and photographed its contents and that Barker took the film and photo equipment, apparently giving it to someone else.

De Diego said that the trio flew back to Miami the next morning.

He said he had worked for Barker as a real estate salesman, but now had an office of his own. He said he knew Barker as well as other Watergate figures, Howard Hunt and Gordon Liddy, from the Bay of Pigs invasion of Cuba.

De Diego said he was not paid for the burglary but

was told he would get plenty of money on future assignments.

De Diego said that when the burglary team entered the building where Fielding's office was located, they met a Mexican-American cleaning woman. He said they told her in Spanish that they had some important material to leave in the office.

She allowed them to leave the bag containing the photo equipment, he said.

The team members returned to the building later, using glass cutters to break through a window, he said. De Diego explained they did not want to carry the bulky bag during the actual break-in.

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Ellsberg Case

Suspended Over Wiretap

New York Times News Service

LOS ANGELES — The judge in the Pentagon Papers trial ordered both sides to appear today and argue whether the case should be immediately dismissed because of newly disclosed wiretap of conversation of Dr. Daniel Ellsberg and the fact that the records on them apparently have vanished from FBI headquarters.

The defense said that because of the constitutional issues involved, it would like to argue also a judgement for acquittal, and it hopes the judge will respond with written rulings on motions for dismissal of the three blocks of counts outstanding against the defendants — espionage, theft and conspiracy.

U.S. District Court Judge William M. Byrne Jr. suspended court proceedings yesterday after the tap of an Ellsberg conversation by the FBI in late 1969 and early 1970 was disclosed. He asked the government to produce all its logs and other records concerning the taps.

But, it was disclosed, the records of the wiretaps and the transcripts of them disappeared some time between July and October 1971.

A YEAR AGO, Byrne ordered that all information on wiretaps be handed over to the court. The government's disclosure yesterday goes to the heart of "taint" of evidence and testimony in this trial.

This "puts a different posture" on the issues, Byrne said. "It appears that Mr. Ellsberg was surveilled during the most crucial period of the in-

dictment from the time of copying to the time of leaving Rand."

Ellsberg copied the Pentagon Papers in October 1969, and left the Rand Corp. in May, 1970.

The burden is now on the government to prove that the telephone conversations were not used to "taint" the case. If the government cannot meet that burden, then as a matter of law the case against Ellsberg and Anthony J. Russo Jr. will be dismissed.

BYRNE had set yesterday for arguing motions to dismiss this case and for arguing defense notions for a verdict of acquittal, but he halted the proceedings before the arguments could start.

He asked, instead, that the government supply him promptly with the

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answers to a long list of questions, and added, "I may still want hear the arguments, and I may not."

"It is impossible to proceed with the legal ramifications until the factual picture is clear," he said. "I need those answers for a factual picture. I want to know what occurred."

HE TURNED to David R. Nissen, the chief prosecutor, and said, "Tell Mr. (Henry) Petersen that I want the information now. Do they (the Justice Department) understand

that I want that now — not at the completion of some investigation?"

Petersen is assistant attorney general.

"If there are not logs and recors (of the wiretaps), I want to know why not," the judge said. "If there were, and they are gone, I want to know why and where."

He then told Leonard I. Weinglass, a defense attorney, that if he had any legal precedents for dismissing on this issue he should produce them as soon as possible.

On May 2, 1972, the judge ordered the prosecu-

tor to produce all wiretap conversations involving the defendants in this case and their lawyers and their consultants, and he reiterated that order on July 7, 1972.

In July and again in December 1972, the government turned over to

him transcripts of wiretaps of members of the defense team, but the judge said that they did not pertain to this case, and their contents were not disclosed. The government has insisted since then that no other wiretaps were outstanding.



—UPI

Felipe DeDiego, a Miami real estate salesman, told a Florida state attorney yesterday that he accompanied a burglary team which entered the office of Daniel Ellsberg's psychiatrist in California in the summer of 1971. He testified that the team photographed records pertaining to Ellsberg.

Photos Made of Doctor Records, Man Claims

Cuban Exile's Account of Break-in Differs From Grand Jury Testimony Given by Hunt

BY FRANK DEL OLMO

Times Staff Writer

MIAMI—A Cuban exile who helped break into the office of Daniel Ellsberg's psychiatrist in 1971 said here that he and two other men who later participated in the Watergate bugging photographed many files in that office.

However, Felipe De Diego, a real estate broker, told investigators for the Dade County state attorney (district attorney) that he could not say for sure that the psychiatric records of Ellsberg, the defendant in the Pentagon Papers trial, were among the files photographed.

De Diego, who said he has been active in anti-Castro activities for many years, said he accompanied Watergate conspirators Bernard Barker and Ronaldo Eugenio Martinez to Los Angeles on the weekend of Sept. 2-3, 1971, on what he thought was "a mission for a government agency," possibly the CIA.

Details of the hour-long interview with De Diego were revealed by Richard E. Gerstein, Dade County state attorney, and his chief investigator, Martin Dardis, who questioned the Cuban businessman with his attorney present. They said the interview was conducted at the request of the Los Angeles County district attorney's office.

Granted Immunity

De Diego, Gerstein said, agreed to give a deposition to Dade County authorities after he was granted immunity from prosecution in Los Angeles County as well as Dade County.

Gerstein noted that De Diego said he was not paid for his part in the Ellsberg burglary, but was promised payment by Barker for "future operations." Gerstein said he did not

ask De Diego to talk about these operations, since he had not been granted immunity from possible prosecution for his part in them.

Details of the burglary of Dr. Lewis Fielding's office, and the rifling of his psychiatric files, as told by De Diego differed in at least one key detail from the incident as detailed by former White House aide E. Howard Hunt in grand jury testimony.

According to Hunt, the Ellsberg burglary team did not find what it was looking for, and only took Polaroid pictures of Fielding's file cabinet and desk, which had been forced open, to show that a job had been done.

His grand jury testimony was revealed last week in open court by U.S. Dist. Judge Matt Byrne, who is presiding over the Pentagon Papers case.

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De Diego said that Barker supplied Martinez with a 35-mm. camera, and that Martinez spent about 30 minutes photographing a series of files in Fielding's office.

Barker also supplied film and floodlights which were used to photograph files during the burglary, which De Diego said took from 45 minutes to an hour.

De Diego told his interrogators that he was first recruited for the Los Angeles break-in four days before it occurred by

Barker, for whom he was working as a real estate salesman. Barker told him he would be working on a government mission with a group headed by Hunt.

De Diego said he knew Hunt, a former FBI man and CIA agent, as "Eduardo" from previous work they had done together for the CIA, including the Bay of Pigs invasion of 1961.

It was Hunt's involvement, De Diego said, that convinced the Cuban exile that the mission was legitimate government activity. De Diego said he saw and dealt with no one throughout the planning and execution of the burglary except for Martinez and Barker, both now in prison after pleading guilty in the Watergate burglary.

He said Barker paid all expenses for the trip to Los Angeles and that the three men traveled under assumed names and stayed at a Beverly Hills hotel not far from the

building where Fielding's office was located.

Not long after arriving, De Diego said, Barker left their hotel room briefly and returned with a briefcase containing the photographic equipment.

The next day, Sept. 2, the team reconnoitered the area around the building, De Diego said. Martinez and De Diego returned at 9 p.m. that night, disguised as deliverymen. De Diego said he and Martinez talked in Spanish to a Mexican cleaning woman in the building, telling her

that the briefcase was for Fielding. They convinced her to let them enter his office suite to leave it there for him.

They returned again about 1 a.m., breaking through the window of a first-floor office and proceeding to Fielding's office where they forced open the door and were told by Barker to "look for the files of a Dr. Ellsberg," according to Gerstein.

De Diego said he did not see any Ellsberg files, however.

KROGH TO TESTIFY ON ELLSBERG BURGLARY

BY WILLIAM FARE

Times Staff Writer

Former White House aide Egil (Bud) Krogh, who says he ordered the break-in at the office of Daniel Ellsberg's psychiatrist, agreed Thursday in Washington, D.C., to testify before the Los Angeles County Grand Jury.

Dep. Dist. Atty. Richard Hecht disclosed Krogh's agreement to appear at hearings here next month on the 1971 Labor Day weekend burglary at Dr. Lewis Fielding's Beverly Hills office.

Hecht, who went to the nation's capital Wednesday to start gathering evidence for the local case, said he also is "on the verge" of getting convicted Watergate coconspirator E. Howard Hunt to testify at the hearings, which are scheduled for June 5 through 8.

Krogh resigned Wednesday from his \$42,500 position as undersecretary of transportation and sent a letter to President Nixon, saying that it was his "overriding desire to accept full responsibility" for the burglary incident.

Krogh was the principal assistant to Mr. Nixon's domestic affairs chief John Ehrlichman at the time the break-in plan reportedly was approved.

Krogh has sent an affidavit about his involvement to U.S. Dist. Judge Matt Byrne, presiding over the Pentagon Papers trial.

Hecht indicated that Krogh had agreed to testify before the grand jury here without any promise of immunity.

Regarding Hunt, Hecht said he is prepared to promise him that he will not be prosecuted in the burglary case if he testifies truthfully in Los Angeles.

"We'll promise Hunt immunity from the burglary prosecution but not from perjury if he does not give us the truth," said Hecht, who is heading the investigation for Dist. Atty. Joseph Busch.

Hecht and district attorney's investigator William Burnett also met Thursday with Henry Petersen, the man in charge of the U.S. Justice Department's investigation into the Watergate scandal and related matters.

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U.S. Aides File Affidavits With Ellsberg Trial Judge

By MARTIN ARNOLD
Special to The New York Times

LOS ANGELES, May 9—Four

Justice Department officials, including Henry E. Petersen, an Assistant Attorney General, swore today that they did not know about the burglary of the office of Dr. Daniel Ellsberg's psychiatrist until April 16 this year.

The affidavits were part of an apparent move by the Government to block the trial judge from dismissing this case by contending that the evidence and testimony presented in 87 days of the Pentagon papers trial had not been tainted by any knowledge obtained in the break-in, which took place Sept. 3, 1971.

The affidavits were delivered to the judge here on the eve of a turning point in the trial tomorrow when attorneys for Dr. Ellsberg and Anthony J. Russo Jr. are scheduled to argue for a judgment of acquittal.

The affidavits do not go to that question, but only to the question of whether evidence and testimony had been tainted. Nor do the affidavits discuss why the Justice Department took 10 days between April 16, when it says that it first heard of the break-in, and April 26, to send that information to the trial judge.

Other Affidavits

The defense immediately said that the information in the affidavits was "highly insufficient" and that it would continue to press for a hearing on the link between the Watergate case and this trial.

Besides the affidavit filed by Mr. Petersen, there were affidavits from Kevin T. Maroney, a Deputy Assistant Attorney General; John L. Martin, an attorney at the Justice Department, and David R. Nissen, the chief prosecutor in this case.

Mr. Nissen, in his affidavit, said that none of the Government's "exhibits and other evidence" used in the trial had been "derived in any manner, directly or indirectly," from the break-in.

If the motion for a judgment of acquittal is granted, the probability is that the sweeping investigation ordered by the

judge into Government misbehavior in the case, and White House involvement, will be ended.

Defense attorneys also asked for as soon as they are received in Washington, the affidavits from Charles W. Colson, President Nixon's former special counsel; Gen. Robert E. Cushman Jr., commandant of the Marine Corps, member of the Joint Chiefs of Staff and former deputy director of the C.I.A. and David R. Young Jr., a former White House aide who was named with Mr. Krogh as a participant in the secret White House investigation into this case.

A motion for judgment of acquittal is based on the contention that the Government produced insufficient evidence to convict on the charges—in this case, six espionage counts, six theft counts and one conspiracy count.

Such a judgment means that the charges could never again be brought against Dr. Ellsberg and Mr. Russo. Yesterday, Judge Byrne said that he "hopes" to rule on the motion tomorrow, after the arguments by Leonard B. Boudin, Charles R. Nesson and Leonard I. Weinglass, the defense attorneys. The Government will be given the opportunity to reply.

The defense is also prepared to argue tomorrow another motion to dismiss parts of the indictment, count by count. It will argue the constitutionality of the conspiracy law as applied to this case.

In the first part of the conspiracy charge, the Government contends that the defendants conspired to deprive the Government of its lawful rights by stealing information that is classified "top secret sensitive."

The question here is, is it constitutional to contend that persons can steal information—not the paper it is printed on—and, further, can two people conspire to violate an Executive order, since there is no statute governing classified documents?

The defense will also argue that the theft counts are not constitutionally applied in this case, because the Federal theft statute has nothing to do with stealing information, only with stealing property.

The question is, did Dr. Ellsberg and Mr. Russo, when they copied the Pentagon papers and then returned the original set, steal information or property?

Mr. Nesson said that the Government had not proved "substantial deprivation" to the Government in the theft counts.

The defense has already argued two motions to dismiss the case. In one, it argued that the case should be dismissed because Judge Byrne twice met last month with Mr. Ehrlichman to discuss the possibility of the judge becoming director of the

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The argument was that Mr. Ehrlichman, at the time President Nixon's top adviser for domestic affairs, was, in essence, attempting to bribe the judge. The judge denied the motion.

The judge had ordered an investigation into the connection between the Watergate case and the Pentagon papers trial, and today that investigation led to the resignation of Earl Krogh Jr., a former White House aide and more recently Under Secretary of Transportation.

It was disclosed here this week that Mr. Krogh had authorized the burglary as part of a secret White House investigation of the Pentagon papers leak and of Dr. Ellsberg's personality.

There was no court session today, but defense lawyers asked the trial judge, Federal District Court Judge William Matthew Byrne Jr., to obtain and turn over to them the testimony of present and former C.I.A. officials that was given to a Senate subcommittee today.

Ruling Not Made Yet

Yesterday, the defense argued again that the Government's misconduct in this case had been so bad that the entire case should be dismissed.

The argument here is that from the beginning the Government has withheld evidence and more recently has not moved very fast in complying with the court-ordered investigation.

The judge has not yet ruled on this motion.

In another development today, Los Angeles County District Attorney Joseph Busch announced that a grand jury investigation has been scheduled here for June 5-8 to inquire into the burglary of the office of Dr. Lewis J. Fielding, Dr. Ellsberg psychiatrist.

Yesterday, for the first time, the defense said in court that psychiatric reports on Dr. Ellsberg were, in fact, stolen during the burglary.

L.A. Panel to Probe Ellsberg Break-In

By a Washington Post Staff Writer
LOS ANGELES, May 9—
A Los Angeles County Grand Jury will hold four days of hearings beginning June 5 into the burglary at the Beverly Hills office of Daniel Ellsberg's psychiatrist, L. A. County District Attorney Joseph Busch said today.

Busch added that his office would go "as high as necessary" in seeking indictments of those responsible for the break-in on Sep. 3, 1971.

Busch said his investigation would continue whether or not Pentagon Papers trial judge Matt Byrne dismisses the case Thursday against Ellsberg and co-defendant Anthony J. Russo Jr.

Busch said one of his chief deputies, Richard Hecht, and investigator William Burnett will meet in Washington with Chief U.S. District Judge John J. Sirica and Henry C. Petersen, who is running the investigation for the Justice Department.

Hecht, Busch said, will also attempt to question E. Howard Hunt Jr., Bernard L. Barker and Eugenio R. Martinez, all of whom are serving sentences for their convictions in the Watergate burglary.

In addition to Hecht, Busch confirmed he had dispatched another deputy district attorney, Stephen Trott, to Miami to question Felipe DeDiego, who, according to grand jury testimony by Hunt, entered the offices of Dr. Lewis Fielding with Barker and Martinez.

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Ellsberg Case 'Taint'

Denied

By Sanford J. Ungar
 Washington Post Staff Writer

LOS ANGELES, May 8—Justice Department officials swore today that none of the government evidence in the Pentagon Papers trial was derived from a burglary at the office of Daniel Ellsberg's psychiatrist or "from any legally impermissible conduct by any government employee or agent."

David R. Nissen, chief prosecutor at the trial of Ellsberg and Anthony J. Russo Jr., said the government "will be able to prove at any hearing" in U.S. District Court here that it did not rely upon "any tainted source" to make its case.

Assistant Attorney General Henry E. Petersen acknowledged, however that the Central Intelligence Agency last October delivered to the Justice Department "Xerox copies of photographs" taken by Watergate conspirator E. Howard Hunt Jr. of the Beverly Hills office building where Dr. Lewis Fielding once treated Ellsberg.

Petersen said that the significance of the photographs did not become apparent until well after the Pentagon Papers case was transferred into the Justice Department's Criminal Division, which he heads, when the Internal Security Division was abolished on March 26.

Only last Thursday, he added, was a check made of "the CIA material" in the Criminal Division's files on Hunt in connection with the Ellsberg-Russo trial.

The statements were included in four affidavits submitted to U.S. District Court Judge W. Mark Byrne

Jr. today by the prosecution. Besides Petersen and Nissen, they were signed by Kevin T. Maroney, deputy assistant attorney general for internal security, and John L. Martin, who has coordinated the case in Washington.

Byrne turned the affidavits over to defense attorneys, who released them to the press.

The judge is expected to rule Thursday on defense motions for dismissal of the case, a directed verdict of acquittal and a hearing on whether the prosecution evidence was "tainted" by the burglary and other aspects of a White House-directed probe of Ellsberg.

The affidavits appeared to be part of the Justice Department's fight to keep the scope of any such hearing narrow.

All of the officials swore that they had no knowledge until at least April 16—when they learned from Earl J. Silbert, principal assistant U.S. attorney in Washington—of the Sept. 3, 1971, break-in at Fielding's office by men hired by Hunt and fellow-Watergate conspirator G. Gordon Liddy.

Martin said he was "familiar with the reports,

memoranda and other investigative materials received by the Department of Justice in its investigation of the unauthorized disclosure of the Pentagon Papers" . . . and none of them came from "Hunt, Liddy, former White House aides David Young and Egil Krogh Jr. . . . or any other group with which they were connected."

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Defense Seek D.C. Affidavits At Pentatrial

By THEO WILSON

Staff Correspondent of THE NEWS

Los Angeles, May 9 — The Pentagon Papers trial judge, whose investigation of alleged governmental misconduct and White House interference in the case has already led to the resignation of former White House aide Egil Krogh Jr., was asked to obtain the testimony given today by former and present Central Intelligence Agency officials to a Senate subcommittee in Washington.

Lawyers for Daniel Ellsberg and Anthony Russo Jr. also asked the court for the testimony

or affidavits, as soon as they are received in Washington, from Charles W. Colson, President Nixon's former special counsel; Marine Commandant Robert Cushman, former CIA deputy director; and David Young, named here with Krogh as a participant in a secret White House investigation of Ellsberg in 1971.

Authorized Burglary

Krogh resigned as undersecretary of transportation after it was revealed here that he authorized and financed a burglary of Ellsberg's psychiatrist's office during the secret White House investigation he conducted with Young and Convicted Watergate conspirators E. Howard Hunt Jr. and G. Gordon Liddy.

The investigation also disclosed that Colson was the official who authorized the falsifying of cables to implicate President John F. Kennedy in the assassination of South Vietnamese Premier Ngo Dinh Diem. Gen. Cushman was named as the official who provided Hunt with CIA Equipment during the secret 1971 White House probe.

The testimony of Dr. Bernard Melloy also was requested by the defense today. He was named in secret grand jury testimony released here as the chief of the CIA psychiatric unit provided Krogh, Hunt, Liddy and Young with a "psychiatric profile" of Ellsberg.

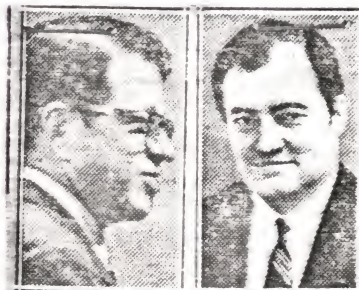
Motion on Acquittal

The judge will hear arguments and recessing will rule tomorrow on a motion for a judgment of acquittal for Ellsberg and Russo.

Byrne ordered government and defense attorneys yesterday to prepare such arguments, and recessed the trial today to give them time to work on them. The jury which is apparently unaware of the court's investigation into government misconduct, has been dismissed until Monday.

The White House investigation was conducted after Ellsberg was already under indictment for illegal possession of the Pentagon Papers, a secret history of the Vietnam war. However, it preceded a second indictment, returned here in December 1971, that expanded the charges to espionage, conspiracy and theft against Ellsberg with Russo as a co-defendant.

If Byrne grants the motion for a judgment of acquittal, he would find Ellsberg and Russo innocent of all charges. It is debatable whether he would then continue his sweeping investigation or conduct a hearing, at which the defense said it would attempt a subpoena President Nixon.



Charles W. Colson
Egil Krogh Jr.
Not at the White House

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Chance of Ellsberg Acquittal Indicated

Case Could End Today
Without Theft Evidence

BY GENE BLAKE

Times Staff Writer

U.S. Dist. Judge Matt Byrne could dispose of all or part of the Pentagon Papers case today without reference to recent disclosures of possible burglary-tainted evidence or links to the Watergate bugging affair, it appeared Wednesday.

It was Byrne who requested arguments by attorneys on a motion for a judgment of acquittal, which he said involves "crucial matters." A hearing on that and other motions for dismissal is set for this morning, and Byrne said he hopes to rule today.

A judgment of acquittal by the judge is similar to a directed jury verdict of acquittal, which has been abolished in the federal courts.

Under the Federal Rules of Criminal Procedure, a judge must order entry of judgment of acquittal "if the evidence is insufficient to sustain a conviction."

The evidence must be viewed in the light most favorable to the government, and then the judge must decide whether the evidence is sufficient for jury determination of the case.

Thus, the only evidence to be considered in such a motion is that which has been presented to the jury.

No disclosures relating to the burglary of the office of Daniel Ellsberg's psychiatrist — directed by Watergate bugging conspirators as part of a CIA-aided White House investigation of the Pentagon Papers leak—have been presented to the jury.

Ellsberg and his codefendant, Anthony J. Russo, are charged with conspiracy, theft of government property and violations of the Espionage Act in the handling of the top-secret Vietnam war study in 1969.

The "crucial matters" referred to by Judge Byrne are the issues which have been raised before and must be resolved by the judge now that all the evidence is in. He has previously shown concern about several problems sprinkled throughout the 15-count indictment (now reduced to 13 counts) and the statutes involved.

Reduced to simplest terms, the issue is whether—in viewing the case as a whole—there is sufficient evidence that any crimes have been

committed to let the jury decide the question of guilt or innocence.

The conspiracy count, for example, of an illegal agreement to do something lawful. At least one overt act in furtherance of such an agreement also must be proved.

At best, the evidence shows that Ellsberg and Russo agreed to copy volumes of the top-secret study and did so, removing top-secret markings from the copies with the intent of furnishing the documents to Congress. The 1971 leak to the New York Times is not involved in the charges.

Sufficient evidence to show that there actually was a conspiracy may be one of the problems confronting the judge.

One of the allegedly illegal aims of the agreement was to "defraud" the government by "impairing, obstructing and defeating its lawful governmental function of controlling the dissemination of classified government studies, reports, memoranda and communications."

However, whether there is such a "lawful governmental function" is questionable.

There is no statute passed by Congress authorizing the security classification system, although its existence has been noted in the Freedom of Information Act. The system was established by an executive order of the President.

President Nixon has rescinded the executive order in effect at the time of Ellsberg's and Russo's alleged crimes.

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The defense has contended that if Ellsberg and Russo agreed to violate anything it was merely a regular journalistic act by the defense attorneys pursuant to the executive order and adopted by the Rand Corp.

Other illegal objects of the agreement in the conspiracy count and charged as having been committed in the remaining counts of the indictment are violations of laws concerning theft of government property and espionage.

There are a number of problems in the theft counts. Evidence shows the volumes of the study involved in the case were stored at Rand Corp. under a special arrangement by officials who were leaving government. They were given special handling.

Even though they might arguably be considered still government property, the next complication is that the documents were merely copied and then returned to Rand Corp.

Ellsberg is charged with stealing and Russo with receiving volumes of a government "study" and other memoranda. If the physical materials were returned, does copying the information in them constitute a theft of "property?"

Moreover, the evidence has not clearly established that even if government property was involved, it had a value in excess of \$100—another necessary ingredient.

Vital Issue

The question of whether it is documents or information that has allegedly been stolen is further complicated when the espionage counts are examined.

Although the relevant sections of the Espionage Act make reference to "information relating to the national defense," the indictment charges Ellsberg and Russo only with mis-handling "documents"—not information.

That may be because wherever "information" is mentioned in the act it is modified by the phrase "information relating to the national defense."

The government apparently was not prepared to prove that either Ellsberg or Russo had any such belief. However, the judge has required that the Pentagon Papers volumes in question be shown to relate to the national defense in a way that their disclosure in 1969 could injure the United States or be of advantage to a foreign nation.

Contradictory evidence on that question has been presented by expert witnesses and properly could be submitted to the jury for decision—if there is sufficient other evidence that crimes were committed.

Kept in Safe

But there are still other problems. The Espionage Act makes reference to such things as "unauthorized possession" of documents, "willfully" communicating them to "any person not entitled to receive" them and failing to deliver them to "the officer or employee of the United States entitled to receive them."

The evidence shows that Ellsberg, who had a top-secret clearance, kept the volumes in his top-secret safe and returned them there after copying them. Testimony was contradictory as to whether he was authorized to keep the documents out of the Rand Corp. top-secret control system.

The prosecution contends Ellsberg should have delivered the doc-

uments to the Rand Corp. top-secret control officer, Jar Butler. However, she admitted we not an employee of the United States and consequently was replaced in that position by a government officer.

Evidence also shows that Russo and Lynda Simpson, an advertising woman who furnished a Xerox machine, merely handled the documents while copying them and had nothing more to do with them.

Does that constitute a willful communication, delivery or transmission of the documents to a person not entitled to receive them?

That and probably many other questions will be pondered by the judge as he listens to the arguments on the motion for judgment of acquittal today.

Meanwhile, he is continuing to press the prosecutors for more information about government misconduct and possible tainted evidence. He has repeatedly stressed that the government now has the burden to prove there is no taint.

Byrne may also have to deal with that problem today, on the motions for dismissal. He is also keeping under consideration the possibility of holding a hearing on taint, either before or after giving the case to the jury.

But that might all be moot should the judge decide to dispose of the case by outright acquittal. As he told defense lawyers when he said he wanted all motions to dispose of the case considered at one time before giving them an opportunity to appeal any adverse ruling:

"Let's assume, hypothetically, that there's nothing left . . ."



LEAVE FOR WASHINGTON—William Burnett, left, investigator for L.A. district attorney, and Dept. Dist. Atty. Richard Hecht board plane for Washington, D.C., in connection with grand jury inquiry into break-in at Daniel Ellsberg's psychiatrist's office.
Times photo by John Malmin

CIA Chief Says Predecessor Helped Hunt's Ellsberg Inquiry

BY RUDY ABRAMSON

Times Staff Writer

WASHINGTON—Officers of the Central Intelligence Agency were ordered by then CIA Director Richard Helms to cooperate with a White House aide who was involved in a 1971 undercover investigation of Daniel Ellsberg and the Pentagon Papers case.

This disclosure came Wednesday as a Senate intelligence subcommittee began an investigation triggered by earlier reports that the CIA had given assistance to E. Howard Hunt and G. Gordon Liddy before the two Watergate figures broke into the Beverly Hills office of Ellsberg's psychiatrist.

Meanwhile Wednesday, another former member of the White House staff, Egil Krogh, resigned his new \$42,500-a-year post as under secretary of transportation, accepting full responsibility for the break-in at the office of the psychiatrist, Dr. Lewis Fielding. Krogh was the ninth administration official to leave or be fired as a result of the Watergate scandal and related cases.

James R. Schlesinger, who succeeded Helms as CIA director last February, told the Senate subcommittee that Helms had instructed agency officers in July, 1971, to work with David Young of the White House staff, who was investigating security leaks.

Shortly afterward, Young asked the CIA to help prepare a psychiatric profile of Ellsberg. Schlesinger said Helms apparently approved CIA participation and read the profile, which was finally submitted to the White House in November.

Reports earlier this week disclosed that the CIA had provided false identification, disguises, and other materials for Hunt and Liddy on orders from Gen. Robert E. Cushman Jr., who had received a request for help from White House aide John D. Ehrlichman.

Schlesinger said Wednesday that the CIA did not know what Hunt was planning. But he said the agency was insufficiently cautious. Preparation of a personality profile of an American citizen under those circumstances was beyond the charter of the CIA, he said, and will not be repeated.

Helms was named U.S. ambassador to Iran after leaving the CIA. Both he and Cushman, now commandant of the Marine Corps, have been asked to appear before the subcommittee headed by Sen. John L. McClellan (D-Ark.).

As Schlesinger detailed contacts between CIA and the White House staff

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members now under fire in the Watergate and Pentagon Papers cases, there were these other developments:

—Krogh sent a letter of resignation to President Nixon, saying: "My overriding desire now is to accept full responsibility for my acts and decisions and to assist in bringing all the facts and circumstances into the open so that a fair judgment of this activity can be rendered."

Krogh, who was the principal assistant to Ehrlichman before leaving the White House, said his agreement to the burglary of the psychiatrist's office was "a step taken in excess of instructions and without the knowledge or permission of my superior."

—Ehrlichman, the President's chief domestic affairs adviser who resigned last week, appeared for a second time before the Watergate grand jury and testified for about four hours. H. R. Haldeman, resigned White House chief of staff, waited throughout the afternoon to be called and was asked to return next Monday.

—The Pentagon disclosed that Hunt and Liddy had sought access to classified defense department documents but were turned down by J. Fred Buzhardt, the department's general counsel.

—The White House went to court in an effort to recover papers locked in a bank vault by ousted presidential aide John W. Dean III, who has been seeking immunity from prosecution in exchange for testimony against others involved in the scandal.

—Former White House counsel Charles Colson, linked in press reports to fake cables written by Hunt, met voluntarily with federal prosecutors. His attorney said he was there to clear his name after repeated references to him in the press in connection with the scandal.

Schlesinger told the Senate subcommittee looking into CIA's activities that cooperation with Hunt was ended Aug. 27, 1971, a week before the burglary in Beverly Hills.

Grew Suspicious

He said CIA officials grew suspicious of Hunt's activities because of his increasing requests. Cushman, then deputy CIA director, called Ehrlichman and told him "further assistance could not be given," Schlesinger said, and Ehrlichman agreed.

The cooperation began in July, 1971, when Ehrlichman called Cushman to seek aid for Hunt, Schlesinger said. Hunt later visited Cushman at CIA headquarters and told the agency he had been given a highly sensitive mission by the White House, Schlesinger said.

He said Hunt was given a phony driver's license, Social Security number, and membership cards under the name Edward Joseph Warren.

Later, Schlesinger explained, Hunt wanted more from the CIA. He asked to be met by CIA representatives on his return from a trip to California, explaining that he wanted film developed for him.

Asks for Secretary

He also asked for a credit card, for a New York mailing address and for a telephone answering service, Schlesinger said. Those requests were refused, as was his plea to have a secretary he had known when he worked for CIA assigned to him.

Though assistance ended in August, Hunt apparently was close to the CIA project of writing the personality assessment of Ellsberg.

The first draft, written on the basis of press clippings, and State Department and Justice Department materials provided by White House aide Young, was rejected in August. It was redone and completed in November.

The last request from Hunt to the CIA apparently came in October, 1971, when he was given unclassified materials from CIA files relating to a 1954 French case in which government documents were leaked. Schlesinger said the papers were delivered to Hunt at his office in the White House.

Schlesinger and Dr. Bernard Melloy, who wrote the Ellsberg profile, were asked to return for further testimony before the Senate committee today.

In opening the hearings,

McClellan, who is regarded as one of the Senate's toughest investigators, said: "I consider that the integrity of our government is involved, if the charges in the media are true."

Schlesinger said the account given the committee Wednesday covers only actions verifiable by agency records. He said he was not certain that all the facts had been put together yet and that an intensive review was continuing.

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Former Nixon administration aide Egil Krogh Jr. definitely had the impression from "some White House source" that information about his inquiry into the Pentagon Papers leak should not be disclosed to Gen. Richard L. Richardson.

Richardson told the Senate Judiciary Committee yesterday that he met with Krogh on May 1, and that he did not ask for and was not given the name of the source.

His testimony kept alive speculation that President Nixon or his key aides used "national security reasons" to delay or limit disclosures to a federal judge about a White House-sponsored mission which led to the burglary of the offices of a psychiatrist for Dr. Daniel Ellsberg, who is on trial on charges of stealing the Pentagon Papers.

While White House press secretary Ronald L. Ziegler yesterday insisted that "material was provided to the court at the direction of the President," he didn't deny specifically that the President had changed his mind after first being hesitant to let the material go to the Ellsberg trial judge, W. Matt Byrne.

IT HAS BEEN learned that Nixon did let some time pass before agreeing to let data on the burglary go to Byrne. After being told that materials were available to send to Byrne, sources said, Nixon took time to check into exactly what was involved.

As soon as full details were provided to him, he ordered the materials sent to the judge, these sources said.

That might account for part of the 11-day delay between the time federal prosecutors first prepared a memo on the burglary and the day when a government prosecutor actually handed that memo to Judge Byrne in Los Angeles.

Newspaper analysts have said that Nixon took steps to block the material from being transmitted to the judge. In reacting to those stories, Ziegler said it would be "absolutely unfounded" to say that Nixon would have proceeded in any other way than to provide material appropriate to a proceeding.

RICHARDSON, in his testimony about this yesterday, told senators:

"Neither the President nor anyone acting on his behalf suggested that this information be withheld."

The attorney general-designate said that Krogh went to him May 1 to seek his advice about whether to send an affidavit acknowledging his supervisory role in the burglary of the psychiatrist's office. Richardson said he told Krogh that there was a general policy that all materials should be forwarded to the judge.

At the time of the burglary, in 1971, Krogh led a group of so-called "plumbers" on the White House staff whose mission was to find out how secret documents were being leaked to the press. Krogh, admitting that the mission included burglary, resigned yesterday from his post as under secretary of Transportation.

The New York Times on Tuesday said Krogh had been told April 30 by John D. Ehrlichman that "the President doesn't want any more of this to surface for national security reasons." The Times also said Richardson had resisted any such position against disclosure.

Richardson yesterday gave senators the following account of the President's involvement in the release of documents to Judge Byrne:

The President, he said, sometime during the week of April 23 accepted the recommendation of Atty. Gen. Richard G. Kleindienst and Asst. Atty. Gen. Henry E. Petersen, who was in charge of the Justice Department's Watergate investigation, that a memo containing allegations that Watergate conspirators E. Howard Hunt Jr. and G. Gordon Liddy were involved in the break-in be submitted to the trial judge.

(THE MEMO, dated April 16, was sent to Petersen by Asst. U.S. Atty. Earl J. Silbert the day after he interviewed John W. Dean III, former counsel to the President.

(Kleindienst has said that he brought the memo to the President's attention April 26 and that the President directed that it be immediately sent to Judge Byrne. The New York Times reported that

the President had earlier told Petersen that the memo should be withheld.)

Richardson said he first learned that the President had personally directed that the memo be submit-

ted on April 29 — the day the President called him to Camp David, Md., to offer him the position of attorney general.

"That was my only communication with the

President about this," Richardson said. "He told me that he directed that the court be informed of actions by White House personnel (in the break-in) Never did any indication come to me that the

disclosures should not be made."

Richardson said he then met with Krogh on May 1, the day after The New York Times said Krogh had been advised by Ehr-

lichman not to disclose anything.

KROGH, Richardson said, was definitely concerned that he would be violating national security restrictions if he disclosed any of the work of the

"plumbers" group.

Richardson said he believes that Krogh was unaware that the President had already directed that all materials be forwarded to the Pentagon Papers trial judge.

Press Leaks Opened Doors for Hunt

By OSWALD JOHNSTON
Star News Staff Writer

Government-wide concern over press leaks during the summer of 1971 seems to be a key factor in explaining the cavalier ease with which E. Howard Hunt had his way with two of the most security-conscious institutions in Washington.

With active support from White House domestic adviser John D. Ehrlichman and two of his aides, David Young and Egil Krogh Jr., Hunt won cooperation from both the CIA and the State Department of a sort that today has both institutions reeling in embarrassment.

At State, Hunt was granted access to the highly restricted Record Service Division and was given permission by U. Alexis Johnson and William B. Macomber Jr., two of the department's highest officers, to make photocopies of classified cables.

The White House yesterday said that Hunt was given a top secret security clearance while serving as a consultant.

At the Central Intelligence Agency, Hunt was assured cooperation as a White House security expert and was given documents, disguises and other equipment to help him in his work. Agency support was assured by Gen. Robert E. Cushman, a former aide to President Nixon who was deputy director of the agency.

IN BOTH cases, Hunt's mission was presented as "identifying and closing off the security leaks that were so much a preoccupation of the government at the time," as CIA director James R. Schlesinger put it in a statement prepared before a Senate committee yesterday.

In both cases, however, the use Hunt actually made of the help given him went far beyond his mandate to plug government press leaks in the aftermath of the Pentagon papers affair.

The CIA equipment was employed in preparing a burglary at the Los Angeles office of the psychiatrist of Pentagon papers defendant Daniel Ellsberg.

The State Department cables, covering six months of Washington

Saigon communication during the climactic overthrow of South Vietnamese President Ngo Dinh Diem in 1963 were employed as raw materials in fabricating a document linking President John F. Kennedy to Diem's subsequent assassination.

Only at the Pentagon did Hunt's mandate to close the administration's press leaks fail to win him access. Defense Department spokesman Jerry W. Friedheim disclosed yesterday that Hunt, accompanied by another man believed to be Hunt's co-worker and, a year later, found to be his fellow Watergate conspirator, G. Gordon Liddy, unsuccessfully sought access to secret Pentagon files late in the summer of 1971.

HUNT WAS turned down, Friedheim said, because Defense follows strict bureaucratic procedures in such cases, and the request should have come through the Justice Department.

(Hunt's grand jury testimony, released Monday, indicates he communicated with the Pentagon: "I also had occasion to inquire—or I had inquiries made of the Pentagon as to whether the so-called back channel (a secure communications link) had been utilized for any of its missing traffic and was told that no copies had been kept at the Pentagon of this type of traffic that might have taken place between, let's say, the commanding general in Saigon and the chief of staff in Washington.")

At the CIA and the State Department, where procedures were less formal, a combination of brief memos, telephone calls and discreet personal visits produced the cooperation Hunt desired.

CIA Director Schlesinger has ordered a procedural review to make sure it does not happen again.

State Department officials, including Secretary William P. Rogers himself, deny their bureaucratic procedures were at fault. But the episode has nevertheless provoked a hurried search of the records to find out how it happened.

From descriptions of these episodes that have surfaced so far, it is possi-

ble to put together this account of the expansion of Hunt's mission as White House "plumber"—closing off leaks—to include forging documents and planning a burglary with the unwitting aid of both the State Department and the CIA.

ON JULY 6, 1971, soon after the Pentagon papers began to be published, Deputy CIA Director Cushman received a telephone call from Ehrlichman. The call, according to agency minutes, informed Cushman that Hunt, a 20-year veteran of the agency's clandestine operations directorate who had retired just a year before, had been signed on as a special consultant of security affairs at the White House.

According to the statement Schlesinger presented yesterday before a Senate Appropriations subcommittee, "A request was made that Mr. Hunt receive assistance from the agency." Two weeks later, on July 22, Hunt called on Cushman in person at CIA headquarters at Langley, Va., seeking the assistance. Hunt, according to Schlesinger, "had been charged with a highly sensitive mission by the White House to visit and elicit information from an individual whose ideology he was not entirely sure of."

Daniel Ellsberg was at this time under active investigation as a probable source of the leaked Pentagon papers, but it is not clear whether Hunt ever named him in this conversation. Agency records show, however, that he

named Ehrlichman as one of his White House sponsors.

HUNT ALSO specified precisely the kind of help he wanted. Identification documents under a false name and a disguise, for an apparently unspecified "one-time operation." He stressed that the operation was top-secret and asked that agency technicians meet him with the materials in a CIA "safe house" to avoid detection.

The next day, at a safe house Hunt later pinpointed in grand jury testimony as on Massachusetts Avenue near the National Cathedral, he was given false documents under the name of Edward Joseph Warren, a wig, glasses and a speech-alteration device.

Meanwhile, Ehrlichman aide David Young, a National Security Council staffer detailed to a special project on security classification in the wake of the Pentagon Papers, had been in touch with CIA Director Richard M. Helms. He supplied Helms with a file of clippings on Ellsberg and requested a personality profile of the Pentagon papers prime suspect.

Helms agreed, and, according to Schlesinger, "instructed agency officers to work with Mr. David Young of the White House staff relative to security leaks." Dr. Bernard Malloy of the CIA Office of Medical Services was instructed to cooperate in working up the profile.

MALLOY eventually prepared two profiles over the next few months. His first effort, completed

Aug. 9, was rejected as not good enough by the White House group, and subsequently several discussions took place between Malloy for the agency, and Hunt and Liddy for the "plumbers."

According to Hunt's later testimony, it was during the search for a detailed psychiatric profile of Ellsberg that the idea for the burglary of his psychiatrist's office developed. As a result, Hunt's demands for agency support began to escalate and draw ever closer to a request for outright support in a clandestine domestic operation—precisely the sort of activity the CIA is forbidden to carry out under the National Security Act of 1947.

During August, Hunt asked for and received a tape recorder disguised in a typewriter case, a camera disguised as a tobacco pouch and a separate set of documents and disguises for Liddy. He had the use of a special secure telephone line to the CIA.

Hunt made a preparatory trip to Los Angeles during this trip and a CIA affidavit to the Justice Department has suggested he told the agency that operatives helping him that his mission "had something to do with the investigation of drugs."

PERHAPS coincidentally, Hunt's immediate superior in the Los Angeles burglary, Egil Krogh, was named by President Nixon on Sept. 9 to be executive director of a special cabinet committee on international narcotics control.

Finally, on Aug. 26, Hunt

asked to be met at Dulles on return from Los Angeles by an agent who also was to develop film for him. Later, Hunt put in a request for a mail drop and telephone answering service in New York, and asked for a credit card.

By this time he had gone too far. A still-unnamed mid-level CIA official, probably in the Clandestine Operations section, under whose authority technical services personnel were helping Hunt, went to Cushman with a warning that the CIA's support in this case was violating the agency charter. On Aug. 27 the association was broken off.

It probably was too late. On Sept. 3 the burglary, whose preparation the agency had unwittingly furthered, took place in Los Angeles.

THE FIRST White House overtures to the State Department were made in August. Despite the post-Pentagon papers alarm, press leaks continued and stories appeared in the New York Times and elsewhere detailing the U.S. negotiating position in the SALT talks and revealing intelligence information concerning Soviet moves in the India-Pakistan crisis.

On Aug. 11, William B. Macomber Jr., deputy undersecretary of State for management, received a classified memo from Ehrlichman's two aides on the press leaks issue, Krogh and Young. It discussed the Pentagon papers problem and requested copies of all cables in State Department files.

Continued on Next Page.

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FILES

Doors Opened for Hunt

Continued from Page A-16.
from the period April 1 to Nov. 30, 1963—the period of the Diem coup.

Five days later, in a followup telephone conversation, Macomber warned Young that cable traffic for a six-month period would run into the thousands and urged that someone be sent over to select the ones worth copying.

It is unclear why the period of the Diem coup was chosen by the White House press leaks team. Hunt has testified, and some officials believe, that the motive may have been to compare Pentagon papers references over an extended period with the actual documents.

As a practical matter, however, that question lay dormant for several weeks, when an entirely different motive for the White House request began to emerge.

ON SEPT. 20, after Hunt's preoccupation with CIA support and Ellsberg's psychiatrist had subsided, Macomber heard from Young again. This time it was a specific request that Hunt be the White House representative to sift through the 1963 cables and that he get started right away.

Macomber, assuming the same motive mentioned in the earlier memo was still in force, agreed.

In addition, since some of the material was in a highly classified, limited distribution, back-channel file, further authorization was requested and received

from U. Alexis Johnson, undersecretary of State for political affairs.

Hunt began work in the file record room that day and continued for two days after. When he was finished, he had copies of 240 separate cables, which he later indicated in sworn testimony provided the raw material for a forged cable implicating Kennedy in the assassination of Diem.

It still is unclear whether this—drafting of the false cable—was Hunt's real purpose in viewing the cables or whether the opportunity simply presented itself and was seized.

HUNT HAS testified that special White House counsel Charles W. Colson instructed him to make the forgery, but Colson has denied it.

Other close observers of the incident have noted that the one-man presidential campaign in South Vietnam of President Nguyen Van Thieu was in progress at the time and was becoming a partisan political issue in Washington.

At a news conference Sept. 16, just four days before Young's second phone call to Macomber, Nixon defended U.S. poli-

cy toward Thieu with an apparently offhand reference to an alleged link between the Kennedy administration and the eventual murder of Diem.

Krogh Resigns at DOT Over Coast Burglary

By Carroll Kilpatrick
Washington Post Staff Writer

Egil (Bud) Krogh Jr., a former White House aide who authorized an attempt to steal documents from Daniel Ellsberg's psychiatrist, resigned yesterday as under secretary of transportation, admitting error of judgment.

In a letter to President Nixon, Krogh took full responsibility for the action and said that he acted without permission from any superior. At the time, he was an assistant to John D. Ehrlichman, the President's chief domestic affairs adviser who resigned last week.

Krogh submitted an affidavit last week to U.S. District Court Judge W. Matt Byrne Jr., who is presiding at the Ellsberg Pentagon papers trial in Los Angeles, admitting that in 1971 he sent Watergate conspirators E. Howard Hunt and G. Gordon Liddy to burglarize the psychiatrist's office.

When Secretary of Transportation Claude S. Brinegar learned of the affidavit he called on Krogh to explain his position publicly, and Krogh asked for a leave of absence to consider what to do.

Krogh's letter to the President, released at the Transportation Department, said that the assignment to the two conspirators "was my responsibility, a step taken in excess of instructions and without the knowledge or permission of any superior."

Under the conditions that prevailed then, Krogh

added, "I believed that my decision was dictated inescapably by the vital, national security interests of the United States.

"I now see that this judgment may well have been in error, though prompted by what was then my highest sense of right.

"Its consequences, to my eternal regret, have proved injurious both to a number of innocent persons and to that reverence for law on which our society is founded".

The former White House aide told the President that his "overriding desire" now was to accept "full responsibility" and to assist in bringing all the facts into the open.

"With public confidence in our government already shaken by the Watergate affair," he said, "and with the complete affirmation of your personal integrity so imperative at this time, I cannot remain in the administration while my role in the special investigative unit is submitted to the legal scrutiny it must now properly receive."

Krogh headed a special White House unit called "the plumbers" set up at the time of the publication of the Pentagon papers to try to stop leaks of secret information and to determine how the Pentagon papers reached the press.

Brinegar named John W. Barnum, general counsel of DOT since June, 1971, as an interim official to succeed Krogh.

At the White House, press

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Mr. Cleveland _____
Mr. Conrad _____
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Mr. Mintz _____
Mrs. Neenan _____

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secretary Ronald L. Ziegler, who daily faces a barrage of questions about Watergate and related matters, said that the White House wanted back documents which former Counsel to the President John W. Dean III said he had placed in a bank safety deposit box.

Dean has turned the keys to the box over to U.S. District Court here.

Ziegler said that the White House had no objection to the court's making copies of the documents but that they are official papers and should be returned to the White House.

"I don't know that's in the papers," Ziegler said. "But these were papers taken from the government. We want the papers back."

The President scheduled a Cabinet meeting for 9 a.m. today, after which, it is believed, he may make a new announcement either about the Watergate investigation or about his reorganization of the White House staff.

Asked what the reaction had been to the President's speech last week on Watergate, Ziegler said the White House had received 4,496 telegrams favorable to the speech and 1,715 that were critical.

The White House has been receiving about 700 letters a day on the speech since Friday, he said, with favorable letters outrunning the critical ones about 2½ or 3 to 1.

The majority of telephone calls have been in support

of the President, Ziegler said.

He emphasized that he gave the figures reluctantly because of recent disclosures that the Committee for the Re-election of the President last year promoted a campaign to encourage telegrams and letters in support of the President's May 8 decision to mine North Vietnamese harbors.

Ziegler said he could state "categorically" that neither the re-election committee nor the Republican National Committee had promoted a letter or telegram campaign this time.

When asked whether the FBI was still guarding the papers of former aides Dean, Ehrlichman and H. R. (Bob) Haldeman, the press secretary said the papers have all been moved to a central location in the Executive Office Building and are under Secret Service rather than FBI supervision.

Ziegler declined to comment on criticisms Vice President Agnew and Sen. William Proxmire (D-Wis.) made Tuesday of press handling of the Watergate case.

Ziegler Says Reports That Nixon

Tried to Block Ellsberg

Data Are Unfounded

States President Ordered Information Sent to Court

By JOHN HERBERS
Special to The New York Times

WASHINGTON, May 9—After more than a day of silence, the White House sought today to put down reports that President Nixon had tried to prevent the Justice Department from providing to the Pentagon papers trial in Los Angeles information on the burglary of the office of Dr. Daniel Ellsberg's former psychiatrist.

"Any reference or suggestion made by anyone that the President would have proceeded in any other way than to provide information to the court is completely unfounded," Ronald L. Ziegler, the White House press secretary, said.

Yesterday, Mr. Ziegler had "no comment" on a report in The New York Times that the President, invoking national security, sought on at least two occasions to prevent the release to the court of details of the burglary, according to sources close to the Watergate case.

Today, after the report was published in The Washington Post and elsewhere, Mr. Ziegler said:

"I am not going to comment on details of stories which have appeared which are based on various sources. I will simply make this observation: The fact of the matter is that this material was provided at the direction of the President."

He then added the statement about "unfounded" reference or suggestion.

The newspaper reports said that the President on both occasions sought at first to block sending of the information to the court on the ground of national security but that he later reversed himself after Justice Department officials protested. The information included disclosure that the burglary had been authorized by White House staff members investigating the release of the Pentagon papers in 1971.

Mr. Ziegler's statement today reflected a posture that the White House has assumed for the last few days and apparently intends to maintain in the weeks ahead: Silence on all matters that have any connection with official investigations of the Watergate case except for issuance of denials to protect the integrity of the President.

In long sessions with reporters, Mr. Ziegler has declined to answer scores of questions relating to the Watergate case, saying that comments from the White House could prejudice the judicial processes. He said he did so on the advice of Leonard Garment, the new White House counsel, and Attorney General-Designate Elliot L. Richardson.

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Mr. Ziegler, however, did confirm that the White House and the Justice Department were seeking the return of nine classified documents that the former White House counsel, John W. Dean 3d, removed from his office and put in a bank vault.

Mr. Garment has told Chief Judge John J. Sirica of the United States District Court for the District of Columbia, that the Administration would not object to the court keeping copies of the documents.

Sources close to the Watergate case said the documents were believed to pertain to national security matters and probably had no bearing on the Watergate case.

Mr. Dean was not the only departing Presidential aide who carried papers from the White House. H. R. Haldeman, who was Mr. Nixon's chief of staff, and John D. Ehrlichman the President's former assistant for domestic affairs, were seen leaving the White House with papers after their resignations on April 30.

Asked if the White House was concerned about those papers or any others that might have been taken, Mr. Ziegler said that Mr. Garment had satisfied himself that no important papers had been taken by Mr. Haldeman or Mr. Ehrlichman.

The day after their resignations, agents of the Federal Bureau of Investigation were stationed in the White House offices to protect the files. Mr. Ziegler said today that all the files pertinent to the Watergate case had been moved to "a central location" and were under strict supervision.

Bizarre Dilemma Confronts Pentagon Papers Trial Judge

By Sanford J. Ungar
Washington Post Staff Writer

LOS ANGELES, May 9—W. Matt Byrne Jr. is the kind of federal judge who moves cautiously and prefers to base his every action on prior legal precedent.

This week, however, as the judge in the Pentagon papers trial, he is confronted with an extraordinary and bizarre dilemma in the case of Daniel Ellsberg and Anthony J. Russo Jr.

Already faced with adjudicating one complex and delicate national controversy—the leak of the sensitive Pentagon papers—Byrne now has been thrust into the violent swirl of an even bigger issue; the Watergate affair and all its antecedents.

At the center of the dilemma are allegations that in the course of investigating one possible crime, White House aides and others in the federal government committed illegal acts themselves.

In a startling 10-day period, it has been disclosed that:

- A burglary squad reporting directly to the White House broke into the Beverly Hills office of Ellsberg's psychiatrist as part of a scheme to determine Ellsberg's "prosecutability."

- The Central Intelligence Agency, in possible violation of its legal authority, provided technical assistance to the burglars over a five-week period.

- The entire operation grew out of President Nixon's

on's personal directive for an urgent investigation—outside the normal channels of the Federal Bureau of Investigation—to identify the sources of leaks of "national security information."

- Watergate conspirator E. Howard Hunt, a member of that operation, forged official State Department cables to implicate the late President John F. Kennedy in the assassination of South Vietnamese President Ngo Dinh Diem.

- Byrne was approached twice during the Pentagon papers trial by former chief White House domestic adviser John D. Ehrlichman about a possible offer of the permanent directorship of the FBI.

The situation is virtually unprecedented in American jurisprudence, and judicial caution has begun to look like a meaningless concept in the attempt to unravel it all.

Byrne is expected to rule Thursday on whether the jury of ten women and two men—sitting since January—will ever get to decide if Ellsberg and Russo are guilty of conspiracy, espionage and theft of government property for photocopying the Pentagon papers.

Attorneys for the two defendants are asking, at the least, that Byrne throw the two-year-old case out of court, or, better yet, that he launch an intensive probe

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here into how Hunt and others in the cast of Watergate characters began looking into Ellsberg's affairs.

Chief defense counsel Leonard B. Boudin appealed to Byrne this week to use his "inherent power to do justice."

Boudin told the judge:

"Each time we talk about, 'Is there a precedent?' Surely I need not remind your honor that precedents are set by judges and your honor is such a judge . . . And in the days to come, other judges won't have to ask me whether there is a precedent, because I will be able to refer to your honor as having established one."

Even before the latest sensational developments, Byrne was seen as having a historic legal role, for the Pentagon papers case poses major questions concerning the limits of government secrecy and freedom of the press.

Among them are:

- Is information itself, when embodied in classified documents, actually "government property," as implied in the indictment against Ellsberg and Russo, or does it belong to the public?

- Does the government security classification system have the force of law, even though it is embodied in presidential executive orders rather than acts of Congress?

- Is the government "defrauded" of its lawful functions whenever someone mishandles or leaks a document stamped secret?

- Can it legitimately be called "espionage" when a person with a security clearance shows classified material to others who do not have such a clearance?

Some legal observers argue that a conviction of Ellsberg and Russo would, in effect, give this country the sort of "Official Secrets Act" that Congress has repeatedly refused to pass, and that it would throw a major stumbling block in the path

of investigative reporting of the sort that unveiled the Watergate affair to the public.

But now there are new issues raised by the recent disclosures, which may be dealt with by Judge Byrne's actions this week.

It is important to determine, for example, whether one part of the government, such as the Justice Department, can be held liable for the possible misconduct of others, such as the CIA.

Some observers also feel that this case could become a test of the limits that should be put on the FBI and other investigative agencies in their probes of alleged illegal conduct.

(One view is that Ellsberg's constitutional rights were automatically violated when the burglary squad broke into the psychiatrist's office and when the CIA compiled a "psychiatric profile" of him, without regard to whether that information was used in the prosecution.)

When Byrne comes into court Thursday morning, he will have several defense motions before him. They are:

- A motion to dismiss the indictment completely on the grounds that the case was so serious that a connection with the actual evidence need not be shown.

- A motion to throw the case out as a "sanction" against the prosecutors for withholding vital information from the court and the defense.

- A motion for a directed verdict of acquittal, based on the contention that the government has presented insufficient evidence to convict Ellsberg and Russo.

(Defense attorneys today backed down on their earlier stand and agreed to argue this motion before Byrne decides whether to dismiss the case.)

- A motion to dismiss parts of the indictment, including the conspiracy and theft charges, on the grounds that they involve an unconstitutional use of the relevant statutes.

- A motion for an extension

of a hearing on whether the evidence in the case was "tainted" by the burglary of the psychiatrist's office and other aspects of the independent Watergate investigation which, according to some reports, included the wiretapping of reporters' telephones.

Also unresolved at this point is the defense's claim that the case against Ellsberg and Russo involves "discriminatory prosecution" for acts regularly committed by government officials.

Byrne has already declared, however, that he feels that issue would be best resolved in a post-trial hearing.

Defense attorneys said today that if Byrne refuses to dismiss the case or to order the hearing on taint, and instead says that some parts of the indictment must go to the jury, they will appeal to the Ninth U.S. Circuit Court of Appeals in San Francisco.

But that decision, they concede, is "subject to veto by our clients." Both Ellsberg and Russo have made it clear that as far as they are concerned, after being tied up in litigation over the Pentagon papers for two years, they will really be satisfied with a verdict, which they expect to be acquittal.

And it is Russo's view that the only "legitimate authority" left is the jury.

Krogh Was Led to Feel Non-Disclosure Was Vital

Former Nixon administration aide Egil Krogh Jr. definitely had the impression from "some White House source" that information about his inquiry into the Pentagon Papers leak should not be disclosed. Atty. Gen.-designate Elliot L. Richardson, has revealed.

Richardson told the Senate Judiciary Committee yesterday that he met with Krogh on May 1, and that he did not ask for and was not given the name of the source.

His testimony kept alive speculation that President Nixon or his key aides used "national security reasons" to delay or limit disclosures to a federal judge about a White House-sponsored mission which led to the burglary of the offices of a psychiatrist for Dr. Daniel Ellsberg, who is on trial on charges of stealing the Pentagon Papers.

While White House press secretary Ronald L. Ziegler yesterday insisted that "material was provided to the court at the direction of the President," he didn't deny specifically that the President had changed his mind after first being hesitant to let the material go to the Ellsberg trial judge W. Matt Byrne.

IT HAS BEEN learned that Nixon did let some time pass before agreeing to let data on the burglary go to Byrne. After being told that materials were available to send to Byrne, sources said, Nixon took time to check into exactly what was involved.

As soon as full details were provided to him, he ordered the materials sent to the judge, these sources said.

That might account for part of the 11-day delay between the time federal prosecutors first prepared a memo on the burglary and the day when a government prosecutor actually handed that memo to Judge Byrne in Los Angeles.

Newspaper accounts have said that Nixon took steps to block the material from being transmitted to the judge. In reacting to those stories, Ziegler said it would be "absolutely unfounded" to say that Nixon would "have proceeded in any other way than to provide materials appropriate to a proceeding."

(RICHARDSON, in his testimony about this yesterday, told senators:

"Neither the President nor anyone acting on his behalf suggested that this information be withheld."

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The attorney general-designate said that Krogh went to him May 1 to seek his advice about whether to send an affidavit acknowledging his supervisory role in the burglary of the psychiatrist's office. Richardson said he told Krogh that there was a general policy that all materials should be forwarded to the judge.

At the time of the burglary, in 1971, Krogh led a group of so-called "plumbers" on the White House staff whose mission was to find out how secret documents were being leaked to the press. Krogh, admitting that the mission included burglary, resigned yesterday from his post as under secretary of Transportation.

Richardson, in discussing Krogh's impression that someone in the White House did not want him to divulge data about the burglary, said he did not know whether Krogh's feeling was based on a recent directive given him or whether he was acting under the general presidential guidelines governing the work of the "plumbers" from the beginning.

WHEN ASKED whether the "White House source" upon which Krogh was supposedly relying could have been resigned presidential assistant John D. Ehrlichman, Richardson responded that that was possible but that he had not been given a name.

The New York Times on Tuesday said Krogh had been told April 30 by John D. Ehrlichman that "the President doesn't want any more of this to surface for national security reasons." The Times also said Richardson had resisted any such position against disclosure.

Richardson yesterday gave senators the following account of the President's involvement in the release of documents to Judge Byrne:

The President, he said, sometime during the week of April 23 accepted the recommendation of Atty. Gen. Richard G. Kleindienst and Asst. Atty. Gen. Henry E. Petersen, who was in charge of the Justice Department's Watergate investigation, that a memo containing allegations that Watergate conspirators E. Howard Hunt Jr. and G. Gordon Liddy were involved in the break-in be submitted to the trial judge.

THE MEMO, dated April 16, was sent to Petersen by Asst. U.S. Atty. Earl J. Silbert the day after he interviewed John W. Dean III, former counsel to the President.

(Kleindienst has said that he brought the memo to the President's attention April 26 and that the President directed that it be immediately sent to Judge Byrne. The New York Times reported that the President had earlier told Petersen that the memo should be withheld.)

Richardson said he first learned that the President had personally directed that the memo be submitted on April 29 — the day the President called him to Camp David, Md., to offer him the position of attorney general.

"That was my only communication with the President about this," Richardson said. "He told me that he directed that the court be informed of actions by White House personnel (in the break-in). . . . Never did any indication come to me that the disclosures should not be made."

C.I.A. HEAD ADMITS ILL-ADVISED ACT

Schlesinger Calls Agency 'Insufficiently Cautious' in Role in Ellsberg Case

By MARJORIE HUNTER

Special to The New York Times

WASHINGTON, May 9—The head of the Central Intelligence Agency said today that the agency had been "insufficiently cautious" in providing materials to a White House aide involved in the burglary of the office of Dr. Daniel Ellsberg's former psychiatrist.

"It was an ill-advised act," said James R. Schlesinger, who was named Director of Central Intelligence earlier this year.

Mr. Schlesinger's comments came as he emerged from a closed hearing being conducted by a Senate Appropriations subcommittee inquiring into the agency's involvement in the Pentagon papers case.

In his testimony, made available later by the subcommittee, Mr. Schlesinger confirmed earlier reports that the request for agency assistance was made in the summer of 1971 by John D. Ehrlichman, a key Presidential adviser who resigned just last week.

Mr. Schlesinger testified that it was Mr. Ehrlichman who had telephoned Gen. Robert E. Cushman Jr., at that time deputy director of the C.I.A. and now commandant of the Marine Corps, requesting agency assistance for E. Howard Hunt Jr., a White House aide who has confessed taking part in the burglary of the psychiatrist's office.

Senator John L. McClellan, Democrat of Arkansas and chairman of the Senate Appropriations Committee and

the subcommittee investigating C.I.A. involvement, said the panel "may very well need Mr. Ehrlichman's testimony."

Senator McClellan also said the subcommittee believed it essential to hear from both Richard Helms, now Ambassador to Iran but director of the agency at the time of the burglary, and from General Cushman.

General Cushman is scheduled to testify Friday before a Senate Armed Services subcommittee in the Pentagon papers case.

Two Officials Identified

Meanwhile, two high State Department officials were identified today as the men who had authorized Hunt to read and copy 240 highly classified documents concerning the Vietnam war in September, 1971.

A State Department spokesman said that William Macomber, then Deputy Under Secretary of State for Management, and U. Alexis Johnson, Deputy Under Secretary for Political Affairs, had specifically authorized Hunt to review the diplomatic cables. Mr. Macomber is now Ambassador to Turkey.

Charles W. Bray, the spokesman for the State Department, said that the authorization had been given at the request of Egil Krogh, Jr. and David R. Young Jr., at that time White House aides.

State Department Satisfied

Both Mr. Krogh and Mr. Young have been implicated in the break-in at the psychiatrist's office. Hunt has testified that he forged cables aimed at linking President Kennedy to the assassination in 1963 of South Vietnamese President Ngo Dinh Diem.

Mr. Bray said today that the White House aides, in asking to see the classified materials, had said an investigation was being made into the leaking of the Pentagon papers.

Mr. Bray said that the state department was satisfied that its response to requests from the White House had been entirely proper.

In another development today, a Pentagon spokesman, Jerry W. Friedheim, said the Defense Department had turned down Hunt's request for classified documents connected with the Pentagon papers in the late summer of 1971.

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Mr. Friedheim said the Hunt request had been rejected on the ground that the request should have come from the Justice Department, not a White House aide.

Visit to General

Mr. Schlesinger testified today in closed session that on July 22, 1971, Hunt visited General Cushman at the C.I.A. building, told him he had been assigned "a highly sensitive mission by the White House to visit and elicit information from an individual whose ideology he was not entirely sure of . . ."

Mr. Schlesinger said that agency records indicate that in the course of the conversation "Mr. Hunt referred to Mr. Ehrlichman by name and General Cushman acknowledged an earlier call from Mr. Ehrlichman to him."

On July 23, 1971, according to Mr. Schlesinger, General Cushman directed that the "appropriate technical services" be given to Hunt. These included, he said, a Social Security card, driver's license, several association membership cards, in the name of "Edward Joseph Warren," along with a wig, glasses and a speech alteration device.

Later, according to Mr. Schlesinger, Hunt was furnished with a tape recorder and a camera disguised in a tobacco pouch and, still later, obtained from the C.I.A. for an associate, G. Gordon Liddy, a wig and glasses and alias documents.

Sometime later, Mr. Schlesinger continued, some C.I.A. officials became "increasingly concerned" over Hunt's repeated requests for assistance. He said that on Aug. 21, 1971, General Cushman telephoned Mr. Ehrlichman at the White House and said that further assistance could not be given and that "Mr. Ehrlichman agreed."

Since the end of August, 1971, according to Mr. Schlesinger, the C.I.A.'s technical services division has not had further association with Hunt. He noted that break-in at the psychiatrist's office took place in early September, 1971.

Gray Got Information

Mr. Schlesinger testified that these events were outlined to

Patrick Gray 3d. at that time acting director of the Federal Bureau of Investigation in July, 1972, and that more detailed materials were reviewed by Attorney General Richard G. Kleindienst and Assistant Attorney General Henry E. Petersen on Oct. 24, 1972.

Mr. Schlesinger said that the C.I.A. "is aware that this material was reviewed on 27 Nov., 1972" by Earl J. Silbert, principal Assistant United States Attorney for the District of Columbia, and that additional submissions were made to Mr. Petersen on Dec. 21, 1972.

Mr. Schlesinger also testified that the C.I.A.'s office of Medical Services had prepared and forwarded to the White House two "indirect personality assessments" of Dr. Ellsberg, at the request of Mr. Young.

This information, he said, was not included in that furnished by Justice Department officials last fall because those who had prepared the material had been unaware of this development.

Mr. Schlesinger assured the McClellan subcommittee today that the C.I.A. had not been aware of the details of Hunt's activities involving the burglary of the psychiatrist's office.

"The agency's impression was that Mr. Hunt was engaged in an activity related to identifying and closing off the security leaks that were so much a preoccupation of the Government at the time," Mr. Schlesinger said.

Mr. Schlesinger also testified that the C.I.A.'s involvement in preparing a psychological profile on Dr. Ellsberg "lies beyond the normal activities of the agency" and said he had instructed the staff not to repeat such an action.



Associated Press

James R. Schlesinger, newly designated Director of Central Intelligence, at Senate subcommittee session.

(Mount Clipping in Space Below)

Ellsberg Case in Chaos Over FBI Wiretap Report

By RICHARD COX
And WILLIAM BELL
Herald-Examiner Staff Writers

Wiretap information suggesting that the government may have learned that Daniel Ellsberg copied the Pentagon Papers, yet did not prosecute, threw Ellsberg's trial into chaos here today and threatened to end it.

U.S. District Court Judge Matt Byrne revealed from the bench that the Federal Bureau of Investigation had a tap on the home telephone of Morton Halperin, chief architect of the Pentagon Papers and a key defense witness, in late 1969 or early 1970.

He said Ellsberg was "overheard" while a guest in Halperin's Bethesda, Md., home.

"Apparently Dr. Ellsberg was surveilled at the most crucial time in the indictment period," Byrne said, noting that a short time after Ellsberg was overheard government agents were questioning Rand Corp. officials about the defendant's activities.

Byrne granted a four-hour recess and ordered prosecutor David R. Nissen to find out if there was a record of the surveillance and, if so, what has become of it.

The disclosures came in a memo from acting FBI director William Ruckelshaus.

Attorneys for Ellsberg and co-defendant Anthony J. Russo contended throughout the four months long trial that the government decided to prosecute only after June, 1971, when the Pentagon Papers were leaked to the press, yet knew long before that the top secret study had been copied.

The defendants are charged with theft, conspiracy and espionage in connection with the

Mr. Felt ☒
Mr. Baker ☒
Mr. Callahan ☐
Mr. Cleveland ☐
Mr. Conrad ☐
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Mr. Bowers ☐
Mr. Herington ☐
Mr. Herwig ☐
Mr. Mintz ☐
Mrs. Neenan ☐

(Indicate page, name of newspaper, city and state.)

A-2 Herald Examiner
Los Angeles, Calif.

Date: 5/10/73
Edition: Thursday Sunset
Author: Richard Cox &
Editor: William Bell
Title: Donald Goodenow
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Character:

or

Classification: 105-27972*
Submitting Office: Los Angeles

☐ Being Investigated

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copying in 1969, not with the leak.

Observers said Byrne could dismiss the case on grounds that the government failed to produce records of the Ellsberg surveillance before or during the trial, as required by a court order.

"I want to know what procedures were used in these electronic intercepts," Byrne demanded. "I want to know whether there was a continuous tape — whether there were summaries.

"I want to know why there are no records of these intercepts in the Department of Justice. I want to know why there are no records in the FBI of these interceptions.

"If there are no logs or records, I want to know why. If they are gone, I want to know where. I want them now, not at the conclusion of some investigation."

The memo said shortly after assuming the FBI post, formerly held by L. Patrick Gray, Ruckelshaus began investigating into alleged FBI wiretapping of newsmen.

He said he began the probe May 4 and received a preliminary report back on May 8, in which an FBI employe recalled "Mr. Ellsberg had been overheard talking from an electronic surveillance of Dr. Halperin's residence."

He said it was the "recollection" of the informant that it was a surveillance of Halperin, and Ellsberg happened to be a guest.

The memo said there was no record of what had been said or of the surveillance operation itself.

Ruckelshaus added, in closing, that he is continuing with the investigation.

Byrne told Nissen he wanted a search of any surveillance records pertaining to Halperin all the way back to Jan. 1, 1967.

Nissen said he did not see the relevancy of knowing the surveillance record of Halperin.

Byrne noted that the surveillance appeared "shortly before the FBI went to Rand and talked to (Richard) Best about some conduct" on the part of Ellsberg.

Ellsberg was elated when the revelation of the wiretap was made in the courtroom.

"It won't be long now!" said Charles Nesson, one of Ellsberg's attorneys, as he grabbed the defendant's hand.

Byrne further ordered that he wanted to see the report on the entire investigation into whether the surveillance of the defendant or newsmen in any way related to this case.

Prior to the Ruckelshaus "turnover," the judge also released to the defense additional documents including an interview in Washington, D.C., yesterday of former White House special counsel Charles W. Colson.

An interview with Felipe De Diego, a Cuban who allegedly participated in the burglary of Ellsberg's psychiatrist's office, and new Central Intelligence Agency documents were turned over to the defense.

Colson's testimony revealed that he was told about the burglary after it occurred, probably by former presidential domestic advisor John D. Ehrlichman.

Colson said he was told last year by both Ehrlichman and former presidential counsel John Dean not to discuss the Ellsberg investigation with anyone because it was "a national security matter."

Ehrlichman repeated the instruction in March or April, Colson continued.

In an FBI interview transcript submitted to Byrne, Colson recalled attending meetings at the White House in July, 1971, concerning the publication of the Pentagon Papers in the newspapers.

He described the meetings as "kind of panic sessions" and said the White House was to make its own investigation of the leak.

Colson said he had recommended E. Howard Hunt convicted Watergate conspirator, take part in the investigation and that later he received a telephone call from Ehrlichman who was then at the Western White House at San Clemente with President Nixon directing that Hunt be hired.

Colson's statement said Hunt, Egil Krogh, David Young and G. Gordon Liddy were "conducting a check for a personality profile of Daniel Ellsberg to determine what motivated him, what kind of wild things he might do."

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(ELLSBERG)

LOS ANGELES (UPI) -- THE JUDGE IN THE PENTAGON PAPERS TRIAL ORDERED LAWYERS FOR BOTH SIDES TO SUBMIT LEGAL ARGUMENTS TODAY ON THE POSSIBILITY OF TERMINATING THE TRIAL BECAUSE OF GROWING ENTANGLEMENTS WITH THE WHITE HOUSE AND WATERGATE.

U.S. DISTRICT COURT JUDGE MATT BYRNE APPEARED TO BE GIVING SERIOUS CONSIDERATION TO DECLARING A MISTRIAL OR DISMISSING ALL CHARGES ~~AGAINST ELLSBERG~~ DEFENDANT ANTHONY RUSSO.

THE JUDGE STERNLY ADMONISHED JUSTICE DEPARTMENT LAWYERS THAT "TIME IS IMPORTANT," SAYING THEY HAVE NOT COMPLIED WITH HIS ORDERS TO TURN OVER ANY FILES AND REPORTS IN THE GOVERNMENT'S HANDS CONCERNING "IMPROPER ACTS" BY WATERGATE FIGURES THAT WOULD CONTAMINATE THE GOVERNMENT'S CASE. ✓

THE JUDGE IS SIMULTANEOUSLY RUNNING A PERSONAL INVESTIGATION OF WATERGATE-ELLSBERG LINKS, WITH THE JURY OUT OF COURT, AND GOING FORWARD WITH THE TRIAL TESTIMONY, WHICH IS ALMOST CONCLUDED.

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WASHINGTON CAPITAL NEWS SERVICE

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ELLSBERG 5-2

DAY LD

BY KATHLEEN NEUMEYER

LOS ANGELES (UPI) -- DEFENSE LAWYERS MOVED FOR A DISMISSAL OF CHARGES AGAINST DANIEL ELLSBERG AND ANTHONY RUSSO TUESDAY FOLLOWING A DISCLOSURE THAT THE WHITE HOUSE HAD BEEN CONDUCTING ITS OWN INVESTIGATION OF THE PENTAGON PAPERS CASE.

U.S. DISTRICT COURT JUDGE MATT BYRNE TOOK THE MOTION AND ONE FOR DISMISSAL UNDER SUBMISSION AS THE TRIAL BECAME MORE DEEPLY TANGLED IN THE WATERGATE AFFAIR.

DEFENSE LAWYERS ALSO ALLEGED THE FEDERAL GOVERNMENT TRIED TO BRIBE THE JUDGE "IN THE VIRTUAL PRESENCE OF THE PRESIDENT" -- A REFERENCE TO A MEETING BETWEEN BYRNE AND FORMER DOMESTIC ADVISER JOHN D. EHRLICHMAN AT WHICH BYRNE WAS TOLD HE WAS BEING CONSIDERED FOR A FEDERAL JOB.

AN FBI MEMORANDUM REVEALED IN COURT TUESDAY DISCLOSED THAT PRESIDENT NIXON PERSONALLY ORDERED AN "INDEPENDENT" WHITE HOUSE INVESTIGATION INTO THE PENTAGON PAPERS LEAK HANDLED BY EHRLICHMAN, WHO RESIGNED MONDAY BECAUSE OF THE WATERGATE SCANDAL.

EHRLICHMAN TOLD THE FBI HE PERSONALLY "DESIGNATED" E. HOWARD HUNT JR. AND G. GORDON LIDDY, CONVICTED WATERGATE DEFENDENTS WHO AT THE TIME WERE WHITE HOUSE STAFF MEMBERS, TO INVESTIGATE ELLSBERG'S "EMOTIONAL AND MORAL PROBLEMS," THE REPORT SAID.

A REPORT TO THE JUDGE BY THE JUSTICE DEPARTMENT LAST WEEK SAID THE DEPARTMENT HAS INFORMATION THAT LIDDY AND HUNT BROKE INTO THE OFFICE OF ELLSBERG'S PSYCHIATRIST AND RIFLED HIS FILES.

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WASHINGTON CAPITAL NEWS SERVICE

EHRlichman WAS QUOTED IN THE MEMO AS SAYING HE DID NOT FIND OUT ABOUT THE BURGLARY UNTIL AFTER IT HAD OCCURRED, AND HE THEN ADMONISHED LIDDY AND HUNT "NOT TO DO THIS AGAIN."

IN ITS FORMAL MOTION FOR DISMISSAL OF THE INDICTMENT, THE DEFENSE CHARGED THAT "FROM THE VERY BEGINNING, THIS PROCEEDING HAS BEEN CHARACTERIZED BY PROSECUTORIAL ABUSE EXTENDING ALL THE WAY TO THE WHITE HOUSE ITSELF, WHICH IS UNPARALLELED IN THE HISTORY OF AMERICAN JURISPRUDENCE."

THE MOTION REFERRED TO A MEETING BETWEEN EHRlichman AND BYRNE AT THE WESTERN WHITE HOUSE LAST MONTH WHILE THE TRIAL WAS IN PROGRESS. BYRNE HAS CONFIRMED HE WAS INVITED THERE BY EHRlichman, BRIEFLY GREETED THE PRESIDENT AND WAS TOLD BY EHRlichman HE WAS A CANDIDATE FOR ANOTHER POST. THE WHITE HOUSE HAS CONFIRMED IT WAS THE DIRECTORSHIP OF THE FBI.

"GIVEN THE EXTRAORDINARY INTEREST THE WHITE HOUSE HAS SHOWN IN THIS CASE, WE WOULD, WERE WE TO USE BLUNT LANGUAGE, CHARACTERIZE THIS AS AN ATTEMPT TO OFFER A BRIBE TO THE COURT--AN ATTEMPT MADE IN THE VIRTUAL PRESENCE OF THE PRESIDENT OF THE UNITED STATES--WHICH WAS FRUSTRATED ONLY BECAUSE THE JUDGE REFUSED TO LISTEN TO THE OFFER," THE MOTION DECLARED.

THE JUDGE HAD TOLD THE TRIAL HE TOLD EHRlichman THAT HE COULD NOT DISCUSS HIS OFFER IN ANY WAY WHILE SITTING IN JUDGMENT ON ELLSBERG.

"THAT NO DISCLOSURE WAS MADE BEFORE THE ISSUE WAS RAISED BY THE DEFENSE IS PERHAPS AN INDICATION THAT JUDGES, LIKE THE REST OF US, HAVE HUMAN FAILINGS," THE DEFENSE MOTION SAID.

"WE ARE NOT DEALING HERE WITH MR. NISSEN (THE TRIAL PROSECUTOR)," DEFENSE ATTORNEY LEONARD BOUDIN SAID IN CALLING FOR "DRASTIC ACTION" BY THE JUDGE. "WE ARE NOT DEALING WITH THE ATTORNEY GENERAL. WE ARE NOT DEALING WITH THE FBI. WE ARE DEALING WITH THE HIGHEST AUTHORITY IN THE COUNTRY--THE PRESIDENT OF THE UNITED STATES."

BYRNE TOOK THE MOTIONS FOR A DISMISSAL AND MISTRIAL UNDER SUBMISSION, SAYING THAT THE DEFENSE MIGHT ARGUE THEM FURTHER IF ANY NEW EVIDENCE APPEARED. BYRNE SAID HE MIGHT EVEN "RENEW THE MOTION MYSELF."

HE ORDERED THE TRIAL, WHICH IS NOW IN THE REBUTTAL STAGE OF THE GOVERNMENT'S CASE, TO PROCEED, BUT ORDERED THE PROSECUTION TO CONTINUE TO TURN OVER TO HIM ANY NEW EVIDENCE OF A LINK BETWEEN THE PENTAGON PAPERS AND WATERGATE.

UPI 05-02 05:07 AED

(Mount Clipping in Space Below)

Attorneys for Ellsberg Urge Nixon Subpoena

Suggestion Linked to Proposed Inquiry on White House Actions

BY GENE BLAKE

Times Staff Writer

Defense attorneys in the Pentagon Papers trial suggested Tuesday that President Nixon himself should be subpoenaed as a witness if a hearing is held into the widening White House involvement in the case.

Without ruling immediately on whether such a hearing will be held, U.S. Dist. Judge Matt Byrne said there are some "crucial matters" involved in a motion for a judgment of acquittal. He did not elaborate.

Byrne said he wants all motions that might dispose of the case heard and decided at one time. He set a hearing on that for 9:30 a.m. Thursday, and said he hoped to rule then.

All evidence in the case was completed and both sides finally rested their cases Tuesday morning—the end of the 18th week of the trial. The judge sent the jury home until Monday.

Other Pending Motions

Also still awaiting rulings by Byrne are motions for dismissal of the indictment on grounds of governmental misconduct, withholding of information and on tainted evidence growing out of the burglary of the office of defendant Daniel Ellsberg's psychiatrist.

Ellsberg and his codefendant, Anthony Russo, are being tried for conspiracy, theft of government property and violations of the Espionage Act in releasing information from top secret government documents on the nation's Vietnam policies.

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I-3 Los Angeles Times
Los Angeles, Calif.

Date: 5/9/73
Edition: Wednesday final
Author: Gene Blake
Editor: William F. Thomas
Title: MC LER

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Submitting Office: Los Angeles
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Released by the judge Tuesday were two reports confirming that convicted Watergate bugging conspirator E. Howard Hunt Jr. obtained assistance from the CIA before the burglary in 1971 through Marine Corps Gen. Robert E. Cushman Jr., then deputy CIA director.

The CIA assistance included providing Hunt with a concealed camera, recorder, alias documentation and a disguise, including a "wig, glasses and a speech alteration device."

The possibility of including President Nixon as a witness in any hearing into the matter was raised by the defense on the basis of a New York Times story saying the President had twice resisted releasing details of the burglary to Byrne.

"A case should not go to a jury when the President of the United States has attempted to obstruct delivery of evidence to this court," defense attorney Leonard Boudin said.

Government Seeks Limited Hearing

Byrne spent most of Tuesday morning discussing with attorneys what the scope of a hearing should be, if one were held. The government argued for very limited scope and said any hearing should be held after a verdict is returned.

On the other hand, defense attorneys said that if a hearing were held, it should have the broadest scope and perhaps involve Mr. Nixon.

"Recent cases have held that the President is not only liable to suit but to subpoena by the court," said Boudin.

Defense attorney Charles Nesson,

said that the defendants had the right to place their fate in the hands of a jury on evidence which they could be assured was without taint.

"If Mr. Nesson's different from some other man who would impede the turnover of evidence?" Nesson asked the judge.

"He has already served notice he intends to claim executive privilege on any conversations of his."

Nesson said he has never heard of executive privilege being claimed in a criminal prosecution.

Referring to Byrne's meeting at the Western White House last April 5 to discuss the possibility of becoming FBI director, Nesson told the judge:

"When you were called to San Clemente, were offered a job and given the hand of the President, I think you were told where the presidency is at."

Additional Materials

Byrne released additional materials to the defense, supplied to him by Justice Department attorney David R. Nissen, including a CIA psychiatric profile prepared on Ellsberg.

The profile was shown to the defense briefly and it was decided that it would not be made public, at least immediately.

The CIA reports revealed that Hunt, known to be working at the White House, visited Cushman on July 22, 1971.

"He stressed that he had been authorized to conduct a very sensitive operation by the White House and that it should be held as a very secret matter," one report stated.

"Mr. Hunt stated that he had a requirement to elicit information and in order to accomplish this he would like some flash alias documentation and physical disguise."

More Support Requested

Gen. Cushman responded that he would look into it and get in touch with Mr. Hunt at his White House office.

Pursuant to Gen. Cushman's response, Mr. Hunt was met by technical personnel on 28 July and provided with a set of alias documents and a disguise (wig, glasses and a speech alteration device)."

Hunt later requested additional support and on Aug. 20, 1971, was given a recorder and business cards, according to the report. He also arranged for an associate to be documented and disguised.

"Mr. Hunt was later given a concealed camera," the report continued. "On 26 August Mr. Hunt telephoned a CIA officer and asked to be met at the airport to pick up and develop certain film."

"This was done and Mr. Hunt was met later in the day when the developed film was returned."

Other documents in the case indicate that Hunt and another Watergate conspirator, G. Gordon Liddy, made a trip to Beverly Hills on Aug. 25 to "case" the office of Ellsberg's psychiatrist, Dr. Lewis J. Fielding. They returned with photographs.

The burglary actually was committed the night of Sept. 3-4, with Cuban-Americans recruited in Miami making the actual entry while Hunt and Liddy maintained surveillance, according to Hunt's grand jury testimony.

Information Reported

On Aug. 27, CIA technical personnel were instructed to "withhold further assistance to Mr. Hunt because his requests had gone beyond the original understanding," the report released Tuesday stated. "Furthermore, they appeared to involve the agency in domestic clandestine operations."

These facts were reported to Cushman and his guidance was sought, according to the report.

Cushman called Boudin in the White House with them concerning and explained that the agency could not meet the kinds of requests Mr. Hunt was levying, the report continued. "The White House official stated he would restrain Mr. Hunt."

Cushman had no further contact with Hunt after Aug. 27, 1971, the report added.

Names of the CIA agents who had contacts with Hunt were deleted from the reports by Byrne for their protection.

Byrne noted that another report, which he did not immediately release, referred to developing pictures of some "unidentifiable location, possibly the Rand Corp."

"Why would that pop into his mind?" Byrne commented, noting that the Rand Corp. has played a major role in the Pentagon Papers trial.

In arguing for dismissal on the ground that the government had failed to turn over information, Boudin took note of reports of a 1970 investigation of Ellsberg at the Rand Corp. The reports were not flushed out by the defense until very late in the trial.

Investigation Held

That investigation came a year before the Pentagon Papers were published in the New York Times.

"It made no difference to them that documents were being copied until they were published in the New York Times," Boudin commented.

It was Byrne who first brought up the remaining motion for a judgment of acquittal.

"I would like to hear some argument on that latter motion," he said adding that it would include argument on whether the Espionage Act is unconstitutional as it has been applied in this case.

The judge said that if his rulings go against the defense, he will allow ample opportunity for attorneys to seek a review by the U.S. 9th Circuit Court of Appeals.



ATTORNEY—Charles Nesson
tells newsmen President should
be subpoenaed as a witness.

AP photo

Hunt Was Given Access To 240 Vietnam Cables

By BERNARD GWERTZMAN

Special to The New York Times

WASHINGTON, May 8 — The State Department acknowledged today that E. Howard Hunt Jr., a Watergate conspirator, was given access to secret Vietnam diplomatic cables in 1971 at the request of David R. Young Jr., then a White House aide.

Charles W. Bray 3d, the department spokesman, said that Hunt was permitted to see all cable traffic between Washington and Saigon between April 1 and Nov. 30, 1963, and was allowed to take copies of 240 cables away with him.

According to Watergate grand jury testimony made public during the Pentagon papers trial in Los Angeles yesterday, Hunt said that another White House aide, Charles W. Colson had asked him to examine the cables as part of a plan to forge a State Department cable linking the late President Kennedy with the assassination of the South Vietnamese President, Ngo Dinh Diem, in November, 1963.

This was the first time that the State Department has been brought directly into the Watergate affair, and Mr. Bray seemed clearly unhappy as he had to answer dozen of questions at the regular noon news conference.

According to Mr. Bray, "on or about Sept. 20, 1971, there was a request from a member of the White House staff—Mr. Young—that Mr. Hunt be given access to cable traffic to and from Saigon between April 1 and Nov. 30, 1963."

Mr. Bray said that Mr. Young, who had been detached from Henry A. Kissinger's National Security Council staff to work for the Domestic Council under John D. Ehrlichman, telephoned William B. Macomber Jr. with the request that Hunt be allowed to see the classified cables.

Mr. Macomber, now the American Ambassador to Turkey, was then the Deputy Under Secretary for management.

Mr. Bray said that "I am not certain that a purpose was stated in connection with the request."

"But I do know from records that Mr. Hunt, who worked for at least part of one day and perhaps more, would not divulge his purpose in inspecting the cable traffic in the records service division," he said.

There were many questions from newsmen whether it was proper for the State Department to allow someone like Hunt—who was then working as a part-time consultant to the White House—to have access to such documents.

Mr. Bray said that when a White House staff member, "in good standing" asks the State Department for assistance, the department complies.

Asked whether Secretary of State William P. Rogers knew of the affair, Mr. Bray said that the first Mr. Rogers learned of Hunt's access to the documents was when he read news reports from Los Angeles yesterday.

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Mrs. Neenan	_____

(Indicate page, name of newspaper, city and state.)

I-3 Los Angeles Times
Los Angeles, Calif.

Date: 5/9/73
Edition: Wednesday final
Author: William Farr
Editor: William F. Thomas
Title: MC LEK

Character:

or

Classification: 105-27952*

Submitting Office: Los Angeles

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Indictments to Be Sought in Break-in at Analyst's Office

BY WILLIAM FARR
Times Staff Writer

Four days of Los Angeles County Grand Jury hearings have been scheduled by Dist. Atty. Joseph Busch to seek indictments of those involved in the break-in at the Beverly Hills office of Daniel Ellsberg's psychiatrist, it was learned late Tuesday.

Sources close to the district attorney's office said that Busch has taken the following steps preparatory to the hearings June 5 through 8:

—Dispatched Dep. Dist. Atty. Richard Hecht, who is heading the local investigation, and investigator William Burnett to Washington, D.C., to gather evidence there. They are to depart today.

—Assigned Dep. Dist. Atty. Stephen Trott to leave Thursday for Miami to question one of the three Cubans who reportedly entered the office of Dr. Lewis Fielding on the Labor Day weekend.

—Designated Dep. Dist. Atty. Richard Kalustian to monitor the daily proceedings in the Pentagon Papers trial in U.S. Dist. Judge Matt Byrne's courtroom.

Silence on Inquiry

Busch declined to discuss his plans for the investigation with newsmen out of courtesy to Judge Byrne, who will be making some crucial decisions this week.

Hecht and Burnett are to meet in Washington with U.S. Dist. Judge John Sirica, who is presiding over the Watergate scandal proceedings, and Henry Petersen, who is in charge of the investigation for the U.S. Justice Department.

Hecht also plans to interview Bernard L. Barker and Eugenio R. Martinez, both serving jail terms in the District of Columbia for their convictions in the Watergate break in.

According to grand jury testimony in Washington last week by Water-

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gate conspirator E. Howard Hunt and John Barker. Martinez were two of the three Cubans recruited in Miami who actually entered Fielding's office.

The 37 pages of Hunt's grand jury testimony revealed that he and another sentenced Watergate participant, G. Gordon Liddy, planned the break-in at the request of White House aide Egil (Bud) Krogh.

Trott will talk in Miami to Felipe Di Diego, the third Cuban mentioned by Hunt as having taken part in the break-in at Fielding's office.

At the request of Busch, Florida Atty. Gen. Richard Gerstein has served an administrative subpoena on Di Diego so that he can be questioned by Trott on Friday morning.

Range of Indictments

There is the possibility that indictments could reach as high as John Ehrlichman, the resigned director of domestic affairs for President Nixon. Krogh was Ehrlichman's top assistant at the time he authorized the burglary.

Ehrlichman conceded knowledge of the break-in during an FBI interview but claimed that he learned of the incident only after it occurred.

Busch also has assigned Detective Sgt. Jack Gately to travel to Folsom Prison to interrogate Elmer Davis, who Beverly Hills police say confessed to the Fielding office break-in even though he was in jail at the time.

District attorney's investigators believe Davis has no relevant connection to the Ellsberg matter but they plan to make certain.

In a separate aspect of the district attorney's investigation, all police reports on Sept. 5, 1971, burglary at the Long Beach office of President Nixon's medical consultant have been turned over to Busch's staff.

Mr. Nixon's medical record was one of those rifled during the break-in at the office of Dr. John C. Lungren.

Investigators do not believe there is a connection between the matters of the Ellsberg and Nixon files. Long Beach detectives have pointed out that nine burglaries were committed at doctors' offices near Dr. Lungren's over a two-week period in September, 1971.

Ellsberg Dismissal Decision Due Tomorrow

By LINDA DEUTSCH

Associated Press

LOS ANGELES — The Pentagon Papers trial judge says he will announce tomorrow whether he will dismiss charges because of Watergate entanglement.

U.S. District Court Judge Matt Byrne sent jurors home until next Monday, telling them presentation of evidence in the case was concluded. He also said he is considering ordering a full-scale investigation and hearings on alleged Watergate and White House links to the Pentagon Papers case.

Defense lawyers said they were "actively considering calling President Nixon as a witness if a hearing is held."

"We consider him eligible to be called," said Leonard Boudin.

BYRNE has never hinted to the jurors that the growing Watergate scandal has engulfed the trial in controversy, but it is uncertain how successful efforts have been to shield the jury from publicity about the case.

Meanwhile, government documents released by Byrne yesterday confirmed reports that the Central Intelligence Agency

provided disguises and a secret camera solicited by convicted Watergate conspirator E. Howard Hunt for a break-in at the office of Pentagon Papers defendant Daniel Ellsberg's psychiatrist.

The documents — undated, unsigned and bearing no letterhead — were given to the judge by the government. They said that Gen. Robert E. Cushman, former deputy director of the CIA and now commandant of the U.S. Marine Corps, met Hunt and approved his initial request for help in July 1971.

THE MEMORANDUM on CIA involvement says that Hunt was given, among other disguises, a wig, glasses and a speech alteration device. It said the CIA also have a Hunt "associate" a disguise and developed film for Hunt from a special CIA camera he had been given.

Hunt himself reportedly has told the Watergate grand jury he also received from the CIA access to "safe houses" and other assistance which would come closer to actual CIA involvement, beyond the presumably more routine administrative matter of providing another department with equipment.

The report says that Hunt's requests were finally turned down only after they began to pile up in August. Then, it said, an unidentified CIA official intervened and urged Cushman to stop the aid because it was involving the CIA in "domestic clandestine operations."

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The intelligence organization generally is not authorized to become involved in domestic affairs, though.

"General Cushman called the appropriate individual in the White House with these concerns and explained that the agency could not meet the kinds of requests Mr. Hunt was levying," the report said. "The White House official stated he would restrain Mr. Hunt."

There was no indication of who "the White House official" was. It was reported earlier that Hunt said the initial request to the CIA to aid Hunt was made by presidential advisor John D. Erlichman.

Byrne had earlier asked for a probe of Hunt's allegation in Watergate grand jury testimony that the CIA had provided equipment for the burglary of the Beverly Hills office of Ellsberg's psychiatrist,

Dr. Lewis Fielding, in reports that Cushman was involved in providing the equipment.

THE TWO government reports submitted to Byrne yesterday corroborated Hunt's story and added new details.

But Byrne said officials had told him they would not reveal the name of the CIA agent who stopped the flow of equipment to Hunt because his life has been "endangered."

Ellsberg, 41, and Anthony Russo, 35, are charged with espionage, conspiracy and theft in the leak to news media of the Pentagon Papers, a top-secret study of U.S. involvement in the Vietnam war.

Attorney Boudin, in lengthy arguments about the hearing being considered by Byrne, said he would give the judge legal precedents to show that President Nixon himself would be "liable for subpoena" if such a hearing were held.

Boudin later told reporters he has no immediate plans to try to subpoena the President, but wants only to establish that Nixon is a "potential witness" and may not be protected by the claim of executive privilege.

The President's name was raised by the defense

in connection with a New York Times report, published in the Star-News yesterday, that Nixon had discouraged disclosure to the judge of the involvement of Hunt and coconspirator G. Gordon Liddy in the psychiatrist's office burglary.

Defense lawyers told the judge they would file immediate appeals if their motions for dismissal of the charges are denied.

In other developments in the case:

Former Atty. Gen. John Mitchell was quoted by ABC News as saying he never knew the White House was conducting its own investigation of Ellsberg, and the case might not have been prosecuted if he had.

The curbside interview yesterday was with ABC News' Bill Brannigan outside Mitchell's Manhattan apartment.

ABC reported this exchange:

BRANNIGAN: Were you aware at the time that the White House was running its own Pentagon papers investigation?

Mitchell: No. I was not.

Brannigan: Isn't it a bit unusual they wouldn't cut the attorney general in on something like that?

Mitchell: Apparently not, because it wouldn't

involve the Justice Department activities in connection with it.

Brannigan: Wouldn't the investigations criss-cross somewhere that you'd become aware of?

Mitchell: I don't know whether they would or not. They didn't.

Brannigan: Is it a usual practice to run investigations from the White House without cutting in the Justice Department?

Mitchell: The Justice Department had its own investigative agency, and I don't know what was being done at the White House. Obviously, we didn't know about this, or the case would have been thrown out.

● Cushman is cutting short a European visit to return and make an affidavit concerning the CIA roles, the Pentagon said.

Sen. Harold Hughes, D-Iowa, said he is convinced the CIA assisted without the knowledge of the agency's top officials. Hughes told a Senate subcommittee hearing that CIA Director James Schlesinger and his immediate predecessor, Richard Helms, have denied any CIA participation in intelligence gathering operations within this country.

Three congressional committees which oversee CIA operations plan to look into charges of CIA involvement starting today with a hearing before the Senate Appropriations subcommittee on intelligence operations.

Rep. Lucien N. Nedzi, D-Mich., said Schlesinger told him that CIA told the Justice Department last October about the technical assistance given Hunt and Liddy.

Nedzi, chairman of a ~~House subcommittee~~ that oversees the CIA, said he wasn't clear from what Schlesinger told him whether the Justice Department was made aware of the connection with Ellsberg.

Among the grounds Ellsberg's lawyers have cited in motions that the case be dismissed are the Justice Department's apparent delay in disclosing the CIA's involvement.

On Ellsberg Break-in

Nixon Tried to Withhold Data

By Carl Bernstein
and Bob Woodward

Washington Post Staff Writers

President Nixon attempted to prevent the Justice Department from providing information on the burglary of the office of Daniel Ellsberg's psychiatrist to the Los Angeles court where Ellsberg is on trial, according to sources close to the Watergate investigation.

The sources reported that the President urged Attorney General-designate Elliott Richardson and Deputy Assistant Attorney General Henry E. Peterson, who had

been supervising the Watergate probe, not to provide the information on grounds that it might adversely affect "national security."

The President's advice was ignored by both men, one of whom was described as "horrified" and the other as "deeply shaken" by Mr. Nixon's action.

One source said Richardson was disbelieving of the President's position at first and that the Attorney General-designate reacted "as if he were struck by a thunderbolt ... His internal reaction was that it is inconceivable for him to think

that there can be any cover-up of any kind."

Petersen, another source reported, "didn't know what to do he was so upset. He had to get this straightened out so he could live with his own children."

In addition to the President's action, the sources reported that Mr. Nixon's former principal deputy for domestic policy, John Ehrlichman, attempted to persuade Egil Krogh Jr. not to disclose what he knew about the break-in at the psychiatrist's office. Several sources yesterday quoted

See WATERGATE, A8, Col. 1

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The National Observer _____
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Nixon Tried to Withhold Ellsberg Data

WATERGATE. From Al Ehrlichman as telling Krogh. "The President doesn't want any more of this to surface for national security reasons."

The account of the President's alleged attempt to prevent release of the Justice Department information on the Ellsberg burglary, first reported by The New York Times yesterday, was confirmed by five sources, among them officials at the White House and the Justice Department, as well as lawyers involved in the Watergate case.

All the sources provided essentially the same account and variously described the President's action as "an attempt to keep the lid on" and "a message that he didn't want this thing to surface." All confirmed Ehrlichman's action as well.

One White House official, who said he was not familiar with all the facts surrounding the matter, said he believed the President acted out of "genuine concern about national security."

The Post's sources said the President's interest in the matter began on April 15, when he was informed by deputy Assistant Attorney General Petersen that the Watergate prosecutors had prepared a memoran-

dum detailing the involvement of two of the convicted Watergate conspirators in the Ellsberg break-in. The memorandum was to be submitted to the judge in the Pentagon Papers trial.

At that time the sources reported, Mr. Nixon urged Petersen for "national security reasons" not to forward the memorandum to the Los Angeles court where Ellsberg is on trial for leaking the Pentagon Papers to the press.

Petersen, in the words of one source, "knew he couldn't live with the situation" if he withheld information that the psychiatrist's office had been broken into by a team supervised by Watergate conspirators E. Howard Hunt Jr. and G. Gordon Liddy.

After two days, all the sources reported, Petersen, a career civil servant praised by colleagues for his record of integrity, sought assistance and advice from then Attorney General Richard G. Kleindienst.

Kleindienst, the sources said, agreed with Petersen that it would be improper to follow the President's recommendation and said he would personally take the matter to Mr. Nixon.

When Mr. Nixon was confronted with Kleindienst's arguments that the material

must be forwarded to the judge in the Ellsberg trial, the President relented and the memo was sent, the sources said.

On April 26, the government prosecutor in the Ellsberg case submitted the memorandum to Federal Judge William M. Byrne Jr. The next day, the judge released the information about the burglary at the psychiatrist's office, causing a furor at the Ellsberg trial. The judge also ordered immediate government inquiry into the circumstances of the burglary, which reportedly angered

some officials at the White House and the Justice Department.

That afternoon, Ehrlichman was interviewed by the FBI at his White House office and told agents he had been responsible for ordering a secret White House investigation into the background of Ellsberg. Ehrlichman also told the agents that the investigation was headed by his deputy, Egil Krogh, and David Young, who resigned three weeks ago from his position as a National Security Council aide assigned to Ehrlichman's office.

Mr. Felt
Mr. Baker

Elsberg Dismissal Decision Due Tomorrow

BY LINDA HUSK

ASSOCIATED PRESS
LOS ANGELES — The Pentagon today said it would not dismiss a former intelligence officer who was convicted of espionage, but it will not restore his status as a full-time employee.

The decision, which was made available to the public today, was a surprise to many Pentagon officials. It was expected that the former intelligence officer, Thomas D. White, would be dismissed from the Pentagon and that his status as a full-time employee would be restored.

White, 41, was convicted of espionage in 1964 for passing secrets to the Soviet Union. He was sentenced to 30 years in prison, but his sentence was later commuted to 10 years. He was released in 1971 and has since lived in the United States.

The Pentagon's decision to not dismiss White was based on the fact that he had not been convicted of espionage. The Pentagon said that White had been convicted of espionage, but that the conviction was based on evidence that was later found to be unreliable.

White's requests were finally turned down only after they began to pile up in August. Then, it said, an official of the Pentagon's intelligence division, Lt. Col. Robert E. Cushman, told White that he was not being considered for reinstatement.

The intelligence official said that White had been convicted of espionage, and that the Pentagon was not willing to restore his status as a full-time employee. The official said that White had been convicted of espionage, and that the Pentagon was not willing to restore his status as a full-time employee.

White had earlier asked for a probe of his alleged espionage. He had asked for a probe of his alleged espionage, and he had asked for a probe of his alleged espionage. He had asked for a probe of his alleged espionage, and he had asked for a probe of his alleged espionage.

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People's World

State Department Let Hunt Copy 240 Cables

CIA Finally Stopped Aid

By Leroy F. Aaron
Washington Post Staff Writer

LOS ANGELES, May 8 — A CIA official has said that his agency abruptly cancelled its assistance to E. Howard Hunt and his burglary squad in August, 1971, when it learned that it was participating in a "domestic clandestine operation."

But, according to a CIA memorandum made public today by Pentagon Papers trial Judge W. Matt Byrne Jr., that realization did not come until five weeks after Gen. Robert Cushman, CIA deputy director, met with and agreed to help Hunt in the scheme to steal psychiatric records of Daniel Ellsberg from his psychiatrist's office in Beverly Hills.

Byrne said this afternoon that he hopes to rule Thursday morning on a defense motion to dismiss the case on the basis of recent revelations of an independent

White House investigation of leaks involving the Pentagon Papers.

The judge also requested both sides in the case to present arguments on a defense motion for a directed verdict of acquittal, but chief defense counsel Leonard B. Boudin said he would not participate in any such argument until the dismissal motion is taken care of.

The memorandum concerning cancellation of CIA assistance to Hunt was one of four such documents turned over to the defense today detailing the CIA's participation in the elaborate project set in motion by former White House domestic affairs chief John Ehrlichman under orders from President Nixon.

See PAPERS, A13, Col. 1

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Finally, CIA Told Hunt 'No'

PAPERS, From A1

The memos confirm that the CIA provided disguises, documents, a camera, and a "speech alteration device" for the burglary squad, which went through the offices of Dr. Lewis Fielding on Sept. 3, 1971.

Byrne turned the documents over after the government rested its rebuttal case without putting on his final witness. The judge excused the jury until Monday and turned his attention to the second, and increasingly dominant issue in the trial: The extent of the government's secret investigation of the Pentagon Papers case and whether or not it tainted the prosecution of Ellsberg and co-defendant Anthony J. Russo Jr.

The CIA memos were based on interviews of certain agency officials, whose names were blanked out by Judge Byrne to protect their anonymity for intelligence purposes.

One of the interviews was dated Dec. 4, 1972, and another, dated July, 1972, had a notation saying it had been turned over to the acting FBI director, L. Patrick Gray III.

The key memo, however, was undated. In it the unnamed CIA official says that Hunt visited General Cushman, who is now commandant of the U.S. Marine Corps, on Jan. 22, 1971. Hunt told the general "he had been authorized to conduct a very sensitive operation by the White House and that it should be held a very secret matter."

The agent said Hunt told Cushman he had "a requirement to elicit information and in order to accomplish this he would like some flash alias documentation and physical disguise."

The official said Cushman ordered CIA technical personnel to meet with Hunt the next day, at which time they gave him a set of alias documents and a disguise, including a wig, glasses and the speech alteration device.

About two weeks later, according to the memos, they again met with Hunt—known to them as "Edward"—helped him adjust his disguise glasses and gave him a tape recorder.

At the next meeting, according to the Dec. 4, 1972, memo, "Edward" was accompanied by an "unknown associate" who also asked for a disguise, false papers and a camera.

"'Edward' and his associate talked about having to stop by the Pentagon before going to the airport, and it was indicated that further assistance would be required immediately upon their return from the trip. 'Edward' did not indicate where he was going, but he left the impression that it had something to do with the investigation of drugs," the memo said.

Other documents, including grand jury testimony by Hunt and an affidavit from his immediate White House boss, Egil Krogh, has revealed that Hunt and G. Gordon Liddy were off to Los Angeles to "case" Dr. Fielding's office.

On Aug. 26, according to the memos, Hunt telephoned a CIA officer and asked to be met at Dulles International Airport to pick up and develop certain film, apparently taken with the CIA camera. This could have been the photos of the building housing Fielding's office, although one CIA agent said he thought it might have been the Rand Corp.

The agent who met Hunt at the airport later developed the film and remembered turning it over to Hunt. In the meantime the agent learned that "additional operational support was to be curtailed because 'Edward's' requests were beyond what was authorized."

On Aug. 27, an unidentified official ordered Hunt cut off because, he said in one of the memos, "they appeared to involve the agency in domestic clandestine operations." That agent said he informed General Cushman, who called "the appropriate individual in the White House with these concerns and explained that the agency could not meet the kinds of requests Mr. Hunt was levying."

The memo continues: "The White House official stated he would restrain Mr. Hunt. Since 27 August 1971 neither General Cushman nor Mr. (the unidentified agent) had any further contact with Mr. Hunt on this subject."

The major issue in today's court session was the question of whether Byrne would hold a hearing to determine the scope of possible government wrongdoing with regard to the Ellsberg-Russo prosecution.

Clearance Not Questioned

By Murrey Marder

Washington Post Staff Writer

E. Howard Hunt Jr. obtained copies of 240 classified diplomatic cables from the State Department in 1971 on a "routine" request from a White House aide, virtually with no questions asked, officials acknowledged yesterday.

Hunt was employed at the time as a White House consultant to check on security leaks, and he subsequently was convicted in the Watergate conspiracy. It was revealed on Monday through Hunt's own testimony that after checking the State Department cables, he forged two of his own to embellish the Kennedy administration's complicity in the Nov. 1, 1963 assassination of President Ngo Dinh Diem of South Vietnam.

The new disclosures yesterday showed that on a

single telephone call from a White House aide, David Young, Hunt gained access to hundreds of State Department cables, apparently with no check at all on Hunt's own security status. Young's call to State, and Hunt's White House identification card, were treated as adequate authority and security clearance, State Department spokesman Charles W. Bray indicated.

For months before, during and after that time, the Nixon administration charged that press disclosures of the Pentagon Papers on the history of the Vietnam war seriously endangered national security. Hunt's mission was supposedly to check on the leakage of the Pentagon Papers, for the theft of which Daniel Ells-

See CABLES, A12, Col. 1

Hunt Browsed in State Dept.

CABLES. From A1

Berg is still on trial in Los Angeles.

At the time, Bray said, Hunt's visit to the State Department was treated as "routine." In the department's defense, Bray said, "... Business gets done as between any set of institutions, public or private, with a certain assumption of authority and benign intent."

"Obviously," said Bray, "and in retrospect, this particular request turns out to have been far from routine—in retrospect."

In grand jury testimony made public Monday in the Ellsberg case, Hunt claimed that Charles W. Colson, President Nixon's former counsel, ordered Hunt to "create" two cables when the documents Hunt obtained from the State Department failed to implicate the Kennedy administration directly enough in the assassination of President Diem, as distinct from the coup to

overthrow Diem. Colson has denied giving such an order.

Bray told reporters yesterday that "on or about Sept. 20, 1971, there was a request from a member of the staff of the White House ... I believe it was David Young ... that Mr. Hunt be given access to cable traffic to and from Saigon for the period ... April 1-Nov. 30, 1963."

The request went to the office of William B. Macomber Jr., deputy under secretary of state, Bray said.

Bray said later yesterday that he talked by telephone with Macomber, now U.S. ambassador to Turkey, and Macomber could not recall a conversation with Young concerning Hunt. Bray said, however, that records indicate a request to someone in Macomber's office and Macomber, in any event, had done business with Young on changes in the classification of documents.

Young at that time was listed as a member of the

National Security Council staff headed by Henry A. Kissinger. Kissinger recently noted, however, that as of July, 1971, Young had been assigned to the Domestic Council, headed by John Ehrlichman.

Bray stressed that "when a staff member in good standing in the White House asks for our assistance in providing facts or documents to the White House for whom we all work, we tend to respond to requests like that on the assumption that the request is made with a certain institutional authority."

State Department records, said Bray, show that Hunt "worked for at least part of one day, and maybe on additional days as well," going through the cables. But Hunt, he said, "would not divulge his purpose in inspecting the cable traffic to those who were assisting him in our records services division."

"We do know that ... when completed his survey of the cable traffic ... he was authorized to and did take with him copies of some 240 cables."

Bray said that the cables extended through many categories, including secret. When asked if anyone at State inquired whether Hunt had security clearance to examine and obtain copies of such documents, Bray said, "I don't know. I am inclined to doubt it, in those circumstances."

"Isn't it a little odd," a newsman asked, "that a pro forma check of Mr. Hunt's security classification was not made?"

"Not, I believe, for any-

one working in the White House, no," replied Bray, "for the same reason that we would not normally check the security clearance of somebody from various other agencies in this government. The fact of employment tends to speak for itself ..."

Bray said that because this "appeared on the face of it to be a routine request from the White House ... It certainly need not have involved the Secretary of State and did not." Bray said he believes that the first time that Secretary William P. Rogers "was aware of this was yesterday, when the wire stories started moving excerpts from Mr. Hunt's deposition out of Los Angeles."

When reports first appeared in the press last month alleging that Hunt had "fabricated" State Department documents concerning Diem's assassination, Bray said there was nothing in those accounts that was "in any way linked to the Department of State." Therefore, Bray said then, there was nothing for State to investigate.

Now, said Bray, "There is an exploration underway."

Bray said Hunt may "have gone directly" to the records division to try to examine the cables on his own authority, before Young's subsequent phone call clearing the path.

Cushman To File Affidavit

By Michael Getler
Washington Post Staff Writer

The Marine Corps Commandant, Gen. Robert E. Cushman, has been "asked" by the Pentagon to cut short a European trip and return to Washington to file an affidavit with the Justice Department concerning allegations that while deputy director of the CIA he authorized use of equipment eventually used in the break-in at the office of Daniel Ellsberg's psychiatrist.

Rep. Lucian N. Nedzi (D-Mich.) disclosed on Monday that James R. Schlesinger had confirmed to him privately that CIA equipment and research had been used by Watergate conspirators E. Howard Hunt Jr. and G. Gordon Liddy in the Ellsberg burglary case and that Cushman had authorized it.

There have been no public assertions thus far, however, that Cushman knew specifically what the equipment was going to be used for, nor is it clear precisely on what basis the request to Cushman for the material was made.

Cushman will "probably" be back in Washington today, according to Pentagon officials.

Pentagon spokesman Jerry W. Friedheim said yesterday that the four-star general "was asked to return," but stopped short of saying that Cushman was ordered to do so.

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Friedheim explained that both the Pentagon's top lawyer, General Counsel J. Fred Buzhardt, and Marine Corps legal officers had talked with Cushman and that the general had agreed with "recommendations" that he "return and make an affidavit which would discuss his activities in the proper legal arena since it is a matter that's in the judicial process."

Friedheim indicated that the suggestion to Cushman to return came from Buzhardt and not from Defense Secretary Elliot L. Richardson, who is to move over to the Justice Department as Attorney General.

Friedheim said there were at least three congressional committees, individual members of Congress, a grand jury and a trial in California, which would undoubtedly be interested in the Cushman statement.

Though the Marine Corps' top officer was working for the CIA at the time of the Ellsberg case break-in and his precise involvement in the authorization of the use of CIA cameras and other equipment is still unclear, the linking of the Commandant with the Watergate case has caused considerable anguish within the Marine Corps.

Interviews with a number of officers yesterday revealed a general feeling of concern that as one put it "the name of the Corps was just being pulled into this octopus of Watergate."

Some officers said that concern expressed over news leaks on national security matters in 1971 might have justified the CIA getting involved and Cushman along with it.

One officer said the fact that a White House National Security Council official, David Young, was involved in investigating the leaks "probably made it seem clear that there was a national security problem at the time."

What officers seem to fear most, however, is that implication that Cushman, a former military aide to then Vice President Nixon in the 1950s, may have been leaned on politically to allow CIA involvement in an area of domestic activities from which the CIA is traditionally barred.

There were also indications yesterday that the Commandant did not like being "asked" and "ordered" to do certain things with respect to the new revelations.

On Monday, Cushman declined to show up at a news conference in the Netherlands, explaining "those are my orders."

Yesterday, Pentagon officials admitted for several hours they were not sure just where Cushman was, and late yesterday they were still not sure when he would in fact return to Washington.

Meanwhile in Congress yesterday, Sen. Harold Hughes (D-Iowa) said he was convinced the CIA assisted in the break-in but that the agency's top civilian directors did not know what was going on.

Hughes said that in closed hearings of the Senate Armed Services Committee earlier this year, both current CIA chief James R. Schlesinger and his immediate predecessor Richard Helms had denied any CIA participation in intelligence gathering operations in this country.

Krogh Quits, Cites Judgment Error

BY STEPHEN M. AUG
Star-News Staff Writer

Egil (Bud) Krogh Jr. resigned today as undersecretary of transportation, and conceded that his judgment was in error—although promoted by his “highest sense of right”—in agreeing to the burglary of the office of Daniel Ellsberg’s psychiatrist.

In a lengthy letter of resignation to President Nixon, Krogh wrote that he was resigning because public confidence in the government had been “shaken by the watergate affair,” and he did not believe he could remain in the administration while his activities are under investigation.

Krogh said a sworn statement by him filed with a federal court in Los Angeles made clear that his agreement to authorize the burglary of the psychiatrist’s office was his own responsibility, “a step taken in excess of instructions, without the knowledge or permission by a supervisor.”

KROGH at the time was working as the leader of a group called “the plumbers” which had been formed to plug leaks in security—principally the 1971 leaking of the Pentagon Papers. The group is thought to have worked directly under former presidential aide John Erlichmann.

Krogh’s letter said, “under the circumstances that prevailed in the summer of 1971, and based on the best information available to me at this time, I

believe that my decision was dictated inescapably by the vital, national security interests of the United States.

“I now see that this judgment may well have been in error, though prompted by what was then my highest sense of right.

“It’s consequences, to my eternal regret, have proven injurious both to a number of innocent persons and to that reverence for law on which our society is formed.”

Krogh, a lawyer, who

held the No. 2 post in the Department of Transportation, said that his “overriding desire now is to accept full responsibility for my acts and decisions,” and to assist in bringing “all the facts and circumstances into the open so that a fair judgment of this activity may be rendered.”

BEFORE becoming undersecretary, Krogh worked as a special assistant in the White House where he handled affairs

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KROGH

Continued From Page A-1

of the District of Columbia and directed a worldwide program to combat narcotics and drug abuse.

In an affidavit filed last week with Judge Matt Byrne of the Pentagon Papers trial in Los Angeles, Krogh revealed that he sent Watergate conspirators E. Howard Hunt and G. Gordon Liddy to Los Angeles to burglarize the office of Dr. Lewis Fielding.

Krogh's resignation, it is understood, was given under considerable pressure by Secretary of Transportation Claude S. Brinegar. It is believed that as soon as Krogh's name surfaced in connection with the burglary of Ellsberg's psychiatrist's office, Brinegar asked Krogh either to make a full public statement or to resign.

Krogh's resignation was delivered to the White House by his chauffeur. Krogh had been on leave since the news broke about a week ago.

In resigning, Krogh said that "it is right that the men and women of the Department of Transportation have an undersecretary who enjoys full public trust and can devote full time to his job."

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White House Probe

Bypassed Mitchell f-12

United Press International

Former Attorney General John N. Mitchell said yesterday that if the Justice Department had known of the White House investigation into the Pentagon Papers affair, "the case would have been thrown out."

In an interview with ABC newsman Bill Brannigan, Mitchell was asked if he was aware at the time that the White House was running its own Pentagon Papers investigation.

"No, it was not a bit unusual that they wouldn't cut the Attorney General in on something like that," he answered.

"The Justice Department had its own investigative agency and I don't know what was being done at the White House. Obviously we didn't know about this, or the case would have been thrown out," he said.

Mitchell said the two investigations did not cross paths.

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CIA's Role in Aiding Hunt Confirmed

By THEO WILSON

Staff Correspondent of THE NEWS

Los Angeles, May 8—An official government report released by the judge at the Pentagon Papers trial today confirmed that the Central Intelligence Agency gave convicted Watergate conspirator E. Howard Hunt Jr. disguises, special cameras, and other assistance in 1971 when Hunt was investigating Daniel Ellsberg and the Pentagon Papers Case.

The report showed that Hunt received the CIA support from Gen. Robert E. Cushman, then deputy director of the CIA, and now commandant of the United States Marine Corps.

The disclosure was part of the material received by U.S. District Court Judge Matt Byrne Jr. during his investigation into the

burglary of Ellsberg's psychiatrist's office and other "misconduct" by the government in its prosecution of charges of espionage, conspiracy and theft.

According to the report, the CIA was unaware that Hunt and his co-conspirator, G. Gordon Liddy, were conducting an "independent" investigation into the

Ellsberg case, at the order of their superiors in the White House.

But it revealed that when Hunt made his first request to Gen. Cushman on July 22, 1971, Hunt was "known to be working at the White House" and told Cushman he was operating on "a very sensitive investigation" which had to be kept "very secret."

A Wig and Glasses

Hunt told Cushman, according to the report, that he needed "Alias documentation and physical disguises" for his work. It said Cushman said "he would look into it," and later issued instructions to provide Hunt with "a wig, glasses, and a speech alteration device."

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On Aug. 20, 1971, Hunt received a recorder and Liddy's card from the CIA, and later also received "a concealed camera." On Aug. 20, 1971, Hunt called the CIA from the airport asking them to pick up and develop films from the camera.

(Hunt has admitted that he and Liddy cased the office and home of Ellsberg's former psychiatrist in August, in preparation for the burglary, which took place on Sept. 8, 1971.)

On Aug. 27, the report continued, a "Mr. Blank"—not identified

as a CIA agent—presumed to be a CIA agent—instructed the technical personnel to withhold further assistance to Mr. Hunt, "because his requests had gone beyond the original understanding. Furthermore, they appeared to involve the agency in domestic clandestine operations.

"Mr. Blank immediately reported these facts to Gen. Cushman and sought guidance. Gen. Cushman called the appropriate individual

in the White House with these concerns and explained that the agency could not meet the kinds of requests Mr. Hunt was levying.

"The White House official stated he would restrain Mr. Hunt. Since Aug. 27, 1971, neither Gen. Cushman nor Mr. Blank had any further contact with Mr. Hunt on this subject."

No Identification on Note

The memorandum was sent from Washington by the Justice Department without a signature or letterhead, and merely stated it was a "Summary of Knowledge of CIA Assistance."

Judge Byrne released it to the defense, with other material including part of a psychological profile provided to Hunt and Liddy in 1971 by the CIA at their request — after the government rested its case.

The jurors were called into the courtroom only long enough to be excused until Monday, with orders from the judge not to read about, discuss, or watch news reports on "this or related cases."

"Tainted" Evidence

For the third time since his investigation started, Byrne asked prosecutor David Nissen if his superiors had "evaluated" the information now surfacing. Nissen said his superiors are convinced that no "tainted" evidence has

been used at the trial, and have not changed their minds.

The prosecutor also argued that the hearing now under consideration with testimony taken from those involved in the scandal, should be postponed until after final arguments are given and a verdict is returned.

But the defense attorneys, Leonard Weinglass, and Charles Nesson told the judge that if their motions for dismissal are denied, then a hearing should be held immediately.

Challenge to Judge

President Nixon's reportedly unsuccessful attempts to suppress evidence during the court-ordered investigation here, Nesson said, was a challenge to Judge Byrne to show the President "where the judiciary is at."

Referring to the offer made to Byrne of the FBI directorship by former presidential adviser John D. Ehrlichman last month, Nesson said:

"You were called to San Clemente and offered a job and given the hand of the President."

(Byrne has said he met Nixon for "less than a minute" during the first of his two secret meetings with Ehrlichman.)

"I think he (Nixon) told you at that point, in some symbolic way, where the President was," Nesson said. He added that Nixon was attempting to impede the flow of information to the court, then the question

to the court is whether President Nixon is going to be told where the judiciary is at."

FBI Role Questioned

Weinglass told the court that the scope of the hearing should include questions not only of CIA involvement in the case, since that agency is not legally allowed to interfere in domestic prosecutions, but of the connection between the FBI and Liddy, "who was a liaison man in the White House with the FBI" during the Pentagon Papers probe in 1971.

Judge Byrne said he was concerned not only about the burglary, which the government has conceded was committed by "government employees," but by "new information arriving every day" which he said was opening up many other allegations of government misconduct.

The Watergate

The Central Intelligence Agency submitted memoranda to the Daniel Ellsberg trial judge claiming that it cut off assistance to Watergate conspirator E. Howard Hunt Jr. as soon as the agency suspected he was engaged in a "domestic clandestine operation." The operation involved the burglary of the office of Ellsberg's psychiatrist in 1971. **Page A1.**

Documents related to the break-in and the CIA's assistance to Hunt were given to the court last week over President Nixon's initial resistance, it was learned. He was persuaded to release them by Elliot L. Richardson, the attorney-general designate, and Assistant Attorney General Henry Petersen. **Page A1.**

The State Department confirmed that it gave E. Howard Hunt copies of 240 classified diplomatic cables at the request of the White House in 1971. Hunt used the cables for reference material in an attempt to link President Kennedy with the assassination of South Vietnamese President Diem in 1963. **Page A1.**

Egil Krogh, Under Secretary of Transportation, is expected to resign today as a result of his involvement in the break-in at the office of Ellsberg's psychiatrist. **Page A19.**

The White House reversed an earlier position and said that Elliot Richardson will have full authority to grant immunity to Watergate case witnesses. **Page A1.**

The Justice Department has been asked by the White House to recover nine documents—apparently related to the Watergate affair—from a safety deposit box rented by former White House Counsel John W. Dean III. **Page A8.**

Elliot Richardson has begun his search for a special prosecutor for the Watergate case. Hearings on Richardson's confirmation as attorney general open today. **Page A1.**

Vice President Agnew and Sen. Proxmire (D-Wis.) both criticized news media handling of the Watergate scandal as McCarthyistic by implying guilt without evidence. Agnew specifically assailed The Washington Post. **Pages A5 and A16.**

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Nixon's Words on Diem

Basis of '71 Comment on U.S. Complicity in Leader's Death Is Difficult to Find

By R. W. APPLE Jr.

Special to The New York Times

WASHINGTON, May 8—On Sept. 16, 1971, President Nixon was asked at a news conference what the United States could do about the one-man presidential campaign then in progress in South Vietnam.

The questioner, Peter Lisagor of The Chicago Daily News, took note of Senator Henry

News Analysis M. Jackson's comment that the President possessed considerable leverage because of massive

American military and economic assistance to Saigon.

Mr. Nixon replied, in part:

"If what the Senator is suggesting is that the United States should use its leverage now to overthrow Thieu, I would remind all concerned that the way we got into Vietnam was through overthrowing Diem, and the complicity in the murder of Diem; and the way to get out of Vietnam, in my opinion, is not to overthrow Thieu."

Little Noticed in 1971

The President's startling assertion of an American role in the murder of Ngo Dinh Diem, the President of South Vietnam, in November, 1963, drew scant attention in 1971.

It had been widely reported at the time of the Diem assassination—and confirmed with the publication of the Pentagon papers in June, 1971—that the Kennedy Administration had played some part in the overthrow of the Diem regime. But no responsible official had ever suggested publicly that the United States Government was guilty of "complicity" in the subsequent murders of President Diem and his brother, Ngo Dinh Nhu.

What led Mr. Nixon to say what he did? Why has he never referred to the matter in public since then, even though he has often been asked similar questions? Was his comment in any way related to the cable forged by E. Howard Hunt Jr., a convicted Watergate conspirator, which made the same assertion at almost the same moment?

No clear answer to any of these questions is available, although Ronald L. Ziegler, the White House Press secretary,

said today that Mr. Nixon had never seen the forged cable and thus could not have based his answer on it.

According to an authoritative White House source, the President privately explains his statement by saying that he read writings of the late Marguerite Higgins, who was a war correspondent in Vietnam, suggesting American complicity in the murders. It is not known which of Miss Higgins's works Mr. Nixon was referring to.

The President's general attitude, the source continued, is that "our involvement in the coup overthrowing Diem made the murder inevitable."

But in his comment, Mr. Nixon was far more explicit than that, asserting American involvement in both the overthrow and the murder.

It is clear that the idea for the President's comment did not come from the bureaucracy. In the days before Mr. Nixon's news conferences, an elaborate briefing book is drawn up for his consideration, with foreign-policy sections provided largely by the National Security Council staff and edited and redrafted by Henry A. Kissinger, Mr. Nixon's adviser on national security.

No Reference Reported

A member of the council staff said today that the material submitted before the 1971 news conference contained no reference to the Diem coup. In fact, he said, no briefing material ever sent to Mr. Nixon from the council contained any such data.

"That is not a part of Administration doctrines," the aide said. "I have never seen it in a position paper or a research effort or anything providing documentation. The only reference to it we have around here is that one curious news conference statement."

"You won't find it in any bibliography. It must have been the President's personal view, expressed in the rather loose context of a press conference, on the basis of some information that came to him privately at the time."

At the time, the White House was preoccupied with the Pentagon papers, publication of which had begun in June.

In August and October, 1963, the narrative contained in the papers recounted, the United States gave its support to a cabal of army generals determined to oust Mr. Diem. The key American operative in communicating with the plotters was Lieut. Col. Lucien Conein of the Central Intelligence Agency, who was with them as they began their coup d'état.

Sanctuary Plan Disclosed

Ambassador Henry Cabot Lodge became so deeply involved, the papers showed, that he won Washington's approval for a plan to provide sanctuary for the families of the conspirators if they failed. The White House cabled Mr. Lodge that "it is in the interest of the U. S. Government that it [the coup] should succeed."

But the papers gave no indication that Mr. Lodge or any other American expected Mr. Diem to be murdered. In fact, in a telephone conversation with the Vietnamese leader, recorded in the papers, the Ambassador said: "If I can do anything for your physical safety, please telephone me."

Colonel Conein said this week that he, too, had expected no assassinations.

Mr. Diem and his brother were picked up by a Land Rover after having escaped from their palace during the coup, probably through a tunnel. They were taken to a church in suburban Cholon, placed in an armored personnel carrier and shot.

Immediately after the publication of the Pentagon papers, on July 6, 1971, Mr. Hunt, a former Central Intelligence Agency employee, went to work at the White House. His first assignment was to investigate the Pentagon papers leak.

Charles W. Bray 3d, the State Department spokesman confirmed that Mr. Hunt had been given copies of 240 cables to and from Saigon "on or about Sept. 23, 1971," after David Young of the White House staff, who was also investigating the leaks, interceded with William B. Macomber Jr. Mr. Macomber was then Deputy Under Secretary of State for Management and is now Ambassador to Turkey.

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Hunt's Testimony

In testimony to the Water-gate grand jury, released yesterday in Los Angeles in connection with the Pentagon papers trial, Mr. Hunt said that he had been asked by Charles W. Colson, then an assistant to the President, whether any of the materials he had obtained showed any complicity by President Kennedy.

He later forged a cable. Mr. Hunt also testified, to show direct Kennedy involvement in the murders. He said that Mr. Colson had directed him to do this. Mr. Colson denied it.

The sequence of events here is muddy; it is not clear, for example, whether Mr. Hunt forged the cable only after obtaining the State Department files, or whether he did so on the basis of other materials that he obtained elsewhere.

If Mr. Bray's date is correct, and Mr. Hunt's forgery was done after he saw the State Department files, Mr. Nixon's comment could not have been based on the forgery, because the news conference took place on Sept. 16, four days before Mr. Hunt, by Mr. Bray's account, looked at the files.

Colson Action Suggested

A former White House official suggested that Mr. Colson had discussed the Hunt project, which was well under way by Sept. 16, with someone else in the White House, perhaps with Mr. Nixon himself, and that the idea of Kennedy complicity was planted, directly or indirectly, in Mr. Nixon's mind.

Mr. Colson himself suggested, sometime in October, a connection between the President's comment and Mr. Hunt.

He asked William Lambert, an investigative reporter, whether he had noticed Mr. Nixon's remark, suggested that "there's a big story there" and steered Mr. Lambert to Mr. Hunt for details.

But Mr. Colson denied today having ever shown the cable to the President or having discussed it with him. Busy preparing for a grand jury appearance tomorrow, he could not be reached for explanation of his conduct with Mr. Lambert.

C.I.A. LINK TO HUNT CONFIRMED BY U.S.

General Ordered Equipment
for Break-In at Office of
Ellsberg's Psychiatrist

By MARTIN ARNOLD

Special to The New York Times

LOS ANGELES, May 8—The deputy director of the Central Intelligence Agency met at the agency with E. Howard Hunt Jr. in July, 1971, and ordered that Hunt be supplied with false identity papers and such disguises as a wig, glasses and a voice alteration device, the Government confirmed today at the Pentagon papers trial.

This equipment, ordered by Gen. Robert E. Cushman Jr., the deputy director, was used by Hunt in the break-in of the office of Dr. Daniel Ellsberg's

Texts of Justice Department
memorandums are on Page 29.

psychiatrist on Sept. 3, 1971. General Cushman is now the commandant of the Marine Corps.

The confirmation came in the form of two documents called "memorandum for the record," both apparently prepared at the C.I.A. One was subtitled

"Summary of contacts by Mr. [name of C.I.A. agent was blanked out] with Mr. E. Howard Hunt." The other was subtitled "Knowledge of C.I.A. assistance."

The two were given by the Justice Department to United States District Court Judge William Matthew Byrne Jr., who ordered them turned over to Dr. Ellsberg and his co-defendant, Anthony J. Russo Jr. They made them public.

In other developments today, the Government rested its rebuttal case against Dr. Ellsberg and Mr. Russo, and the judge sent the jury home until Monday while legal arguments are heard.

Judge Byrne took under consideration proposals to hold a special hearing, before the case goes to the jury, in which there would be an attempt to determine why President Nixon

had personally opposed sending reports of the break-in out here to the judge.

Richard G. Kleindiesnt, the former Attorney General, filed an affidavit in Washington opposing the turn-over to the defendants of two Government wiretaps of participants in this case.

Picked Up Papers

According to the second memorandum, the meeting between General Cushman and Hunt took place on July 22, 1971, and the following day Hunt met with the C.I.A.'s "technical personnel" to pick up his false identification papers and his disguises.

The memorandum says that, again, on Aug. 20, Hunt was given equipment, this time a recording machine and business cards, and that at that time he arranged for an associate also to be outfitted for the "casing" of the office of Dr. Lewis J. Fielding, Dr. Ellsberg's psychiatrist. The "casing" took place on Aug. 25 in Beverly Hills.

The following day, Aug. 26, Hunt was said to have returned to Washington and asked the C.I.A. to meet him at the airport and pick up and develop film that he had taken in Beverly Hills. This was done, the memorandum said.

But on Aug. 26, according to the document, an unnamed agent of the C.I.A. abruptly ordered the technical personnel to cease helping Hunt "because his requests had gone beyond the original understanding."

"And, the agent said, 'furthermore, they appeared to involve the agency's domestic clandestine operations.' The agent immediately told this to General Cushman, who called a White House official 'and explained the agency could not meet the kinds of requests Mr. Hunt was making.'"

The White House official, unnamed, said that he would "restrain" Hunt and, the memorandum says, since Aug. 27, 1971, "neither General Cushman nor Mr. [the unnamed agent] had any further contact with Mr. Hunt on this subject."

In the first memorandum, two unnamed C.I.A. agents are referred to. They told essentially the same story, only they said that they had met Hunt under the name of "Edward." One of the agents said that he had met "Edward" about five times, and that it was not until the Watergate inquiry, and the attendant publicity, that he realized that "Edward" was Hunt.

That agent said that he thought he had met Hunt's associate in the break-in, G. Gordon Liddy, a convicted Water-

gate conspirator, under the name, "George."

This memo was produced on Dec. 4, 1972, to be used in the Watergate investigation. Neither memorandum bore any letterhead.

A more detailed list of C.I.A. equipment provided to Hunt included a camera and surveillance equipment to record incoming telephone calls. It, too, was released today.

Equipment Unusable

The recording equipment, however, proved to be unusable, because the C.I.A. had provided Hunt with equipment for "overt" not "clandestine" recording in the belief that he would be interviewing defectors.

The judge heard this afternoon oral argument by Leonard B. Boudin, a defense counsel, to dismiss the charges on the ground that the Government's misbehavior had prejudiced the case against the defendant.

"This case is under a moral cloud, the blackest in recent history," Mr. Boudin said. The defense had previously argued for dismissal on the ground that the judge had twice met with John D. Ehrlichman, former aide to President Nixon, who discussed with him the directorship of the F.B.I.

And the defense had also argued for dismissal on the gen-

eral grounds of the Government's misbehavior in withholding evidence during the trial and in the break-in into the office of Dr. Ellsberg's doctor and the allegedly desultory manner in which the Government had complied with the judge's orders for an investigation into the link between the Watergate and Pentagon papers case.

Judge Byrne told the defense today that he wanted to hear it argue on Thursday all its grounds for dismissal and also to hear argument for a directed verdict of acquittal.

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Texts of Two Memorandums in the Ellsberg Case

Special to The New York Times

LOS ANGELES, May 8—Following are the texts of two memorandums given by the Justice Department to the United States District Court here and turned over to Dr. Daniel Ellsberg and Anthony J. Russo Jr., who made them public:

Memorandum for the record

(1)

Subject: Summary of contacts by Mr. [Blank] with Mr. E. Howard Hunt.

1. On 4 December 1972 Mr. [Blank] was interviewed for the purpose of obtaining full details on his contacts with "Edward" and an associate during the summer months of 1971. Mr. [Blank] has now identified "Edward" as being E. Howard Hunt.

2. Mr. [Blank] advised that in the summer of 1971 he and his section chief were called into the office of the deputy division chief, who briefed them to the effect that a disguise, documentation and other support were to be provided to an individual identified as "Edward."

[Blank] met with "Edward" the following day and made all the necessary arrangements to immediately provide him with a disguise and alias documentation. "Edward" was observed signing his name to those items which required a signature, and he tried a mouth device that was utilized in connection with the operations.

Needed Some Help

3. Approximately two weeks later, "Edward" called to indicate that he needed some help with the disguises glasses. [Blank] is not sure of timing, but he recalls that Mr. [Blank] accompanied him to the meeting because [Blank] had been asked to provide "Edward" with a tape recorder. [Blank] showed "Edward" how the

tape recorder worked and then departed from the house without waiting for [Blank].

The latter individual made some adjustment to the glasses. And it was probably at this meeting that "Edward" inquired about a back-stopped telephone number and address in New York. [Blank] indicated that he would have to check with his superiors. Mr. [Blank] is not absolutely certain, but it is his best recollection that "Edward" also requested a disguise and alias documentation for an associate.

4. At the next meeting, "Edward" was accompanied by an unknown associate, who expressed a requirement for a disguise, alias documentation and a camera. [Blank] immediately made all the necessary arrangements for this support, and the associate was appropriately briefed on the use of the camera.

"Edward" and his unknown friend talked about having to stop by the Pentagon before going to the airport, and it was indicated that further assistance would be required immediately upon their return from the trip. "Edward" did not indicate where he was going, but he left the impression that it had something to do with the investigation of drugs.

5. In what was assumed to be a long-distance telephone call, Mr. [Blank] was contacted at his home in less than three weeks. At this time "Edward" asked that he be met at Dulles Airport at about 6:00 A.M. the following day. Mr. [Blank] met "Edward" and his associate at Dulles Airport early the following morning, when he was given some film and asked to have it developed later in the afternoon. Mr. [Blank] is "certain that the pictures were developed and delivered to "Edward" in ac-

cordance with his priority request.

It was also at about this time that Mr. [Blank] was informed by his supervisor that additional operational support was to be curtailed because "Edward's" requests were beyond what was authorized. In this last meeting with "Edward," [Blank] delivered the photographs and indicated that additional operational support would not be forthcoming without specific authorization. However, "Edward" was obviously in a hurry, apparently having some type of appointment, and the meeting lasted less than 10 minutes.

6. Mr. [Blank] stated that he cannot be sure, but he estimates that he met with "Edward" on about five different occasions. In response to inquiry, Mr. [Blank] advised that he is now reasonably certain that "Edward" is E. Howard Hunt, based upon 1972 publicity relating to the Watergate incident. With respect to the second individual, "Edward's" associate, Mr. [Blank] stated that he was a "similar type" to Gordon Liddy. Mr. [Blank] does not recall the use of the name "Tom," and it is his best recollection that the second individual used the name "George."

Memorandum

for the Record (2)

Subject summary of

Mr. [Blank] knowledge

of C.I.A. assistance to

Mr. E. Howard Hunt

1. On 22 July 1971, Mr. E. Howard Hunt, known to be working at the White House, visited General Cushman. He stressed that he had been authorized to conduct a very sensitive operation by the White House and that it should be held as a very secret matter. Mr. Hunt stated that he had a requirement to elicit information and in order to accomplish this he

would like some flash alias documentation and physical disguise. General Cushman responded that he would look into it and get in touch with Mr. Hunt at his White House office.

2. Pursuant to General Cushman's instructions, Mr. Hunt was met by technical personnel on 23 July and provided with a set of alias documents and a disguise (wig, glasses, and a speech alteration device).

3. Thereafter, Mr. Hunt requested certain additional support, on 20 August, Mr. Hunt was given a recorder and business cards. He arranged for an associate to be documented and disguised. He asked for a back-stopped address and phone in New York, but they were not provided.

4. Mr. Hunt was later given a concealed camera. On 26 August Mr. Hunt telephoned a C.I.A. officer and asked to be met at the airport to pick up and develop certain film. This was done, and Mr. Hunt was met later in the day when the developed film was returned.

5. On 27 August Mr. [Blank] instructed the technical personnel to withhold further assistance to Mr. Hunt because his requests had gone beyond the original understandings. Furthermore, they appeared to involve the agency in domestic clandestine operation. Mr. [Blank] immediately reported these facts to General Cushman and sought guidance. General Cushman called the appropriate individual in the White House with these concerns and explained that the agency could not meet the kinds of requests Mr. Hunt was levying. The White House official stated he would restrain Mr. Hunt. Since 27 August, 1971, neither General Cushman nor Mr. [Blank] had any further contact with Mr. Hunt on this subject.

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Dr. and Mrs. Daniel Ellsberg outside court in Los Angeles yesterday after both sides rested in the Pentagon papers trial of Dr. Ellsberg and Anthony J. Russo Jr. United Press International

'Horrificed' Aides Balked

Nixon Asked Data Withheld

By Carl Bernstein
and Bob Woodward

Washington Post Staff Writers

President Nixon attempted to prevent the Justice Department from providing information on the burglary of the office of Daniel Ellsberg's psychiatrist to the Los Angeles court where Ellsberg is on trial, according to sources close to the Watergate investigation.

The sources reported that the President urged Attorney General-designate Elliot Richardson and Deputy Assistant Attorney General Henry E. Petersen, who had been supervising the Watergate probe, not to provide the information on grounds that it might adversely affect "national security."

The President's advice was rejected by both men, one of whom was described as "horrificed" and the other as "deeply shaken" by Mr. Nixon's action.

One source said Richardson was disbelieving of the President's position at first and that the Attorney General-designate reacted "as if he were struck by a thunderbolt ... His internal reaction was that it is inconceivable for him to think that there can be any cover-up of any kind."

Petersen, another source reported, "didn't know what to do he was so upset. He had to get this straightened out so he could live with his own children."

In addition to the President's action, the sources reported that Mr. Nixon's former principal deputy for domestic policy, John Ehrlichman, attempted to persuade Egil Krogh Jr. not to disclose what he knew about the break-in at the psychiatrist's office. Several sources yesterday quoted

Ehrlichman as telling Krogh: "The President doesn't want any more of this to surface for national security reasons."

The account of the President's alleged attempt to prevent release of the Justice Department information on the Ellsberg burglary, first reported by The New York Times yesterday, was confirmed by five sources, among them officials at the White House and the Justice Department, as well as lawyers involved in the Watergate case.

All the sources provided essentially the same account and variously described the President's action as "an attempt to keep the lid on" and "a message that he didn't want this thing to surface." All confirmed Ehrlichman's action as well.

One White House official, who said he was not familiar with all the facts surrounding the matter, said he believed the President acted out of "genuine concern about national security."

The Post's sources said the President's interest in the matter began on April 15, when he was informed by Deputy Assistant Attorney General Petersen that the Watergate prosecutors had prepared a memorandum detailing the involvement of two of the convicted Watergate conspirators in the Ellsberg break-in. The memorandum was to be submitted to the judge in the Pentagon Papers trial.

At that time, the sources reported, Mr. Nixon urged Petersen for "national security reasons" not to forward the memorandum to the Los Angeles court where Ellsberg is on trial for leaking the Pentagon Papers to the press.

Petersen, in the words of one source, "knew he couldn't live with the situation" if he withheld information that the psychiatrist's office had been broken into by a team supervised by Watergate conspirators E. Howard Hunt Jr. and G. Gordon Liddy.

After two days, all the sources reported, Petersen, a career civil servant praised by colleagues for his record of integrity, sought assistance and advice from then Attorney General Richard G. Kleindienst.

Kleindienst, the sources said, agreed with Petersen

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that it would be improper to follow the President's recommendation and said he would personally take the matter to Mr. Nixon.

When Mr. Nixon was confronted with Kleindienst's arguments that the material must be forwarded to the judge in the Ellsberg trial, the President relented and the memo was sent, the sources said.

On April 26, the government prosecutor in the Ellsberg case submitted the memorandum to Federal Judge W. Matt Byrne Jr. The next day, the judge released the information about the burglary at the psychiatrist's office, causing a furor at the Ellsberg trial. The judge also ordered immediate government inquiry into the circumstances of the burglary, which reportedly angered some officials at the White House and the Justice Department.

That afternoon, Ehrlichman was interviewed by the FBI at his White House office and told agents he had been responsible for ordering a "secret White House investigation into the background of Ellsberg. Ehrlichman also told the agents that the investigation was headed by his deputy, Egil Krogh, and David Young, who resigned three weeks ago from his position as a National Security Council aide assigned to Ehrlichman's office."

On Sunday, April 29, President Nixon asked Richardson to replace resigning Attorney General Kleindienst as a means of restoring confidence in the Justice Department and to preside over the department's Watergate investigation.

Richardson. The Post's sources said, was told by the President that he would have "an absolutely free hand" in supervising the investigation. At this point, the sources told slightly differing versions. All, however, agreed that the President also told Richardson—at a minimum—that certain "national security matters" should remain secret in the Watergate investigation.

"Nixon told Richardson to keep the Pentagon Papers out of the Watergate investigation," one source said flatly.

Another said: "It wasn't that explicit; in fact, Richardson at first wasn't completely clear about the implications of what the President said. It was vague, but the message was that the President didn't want some national security matters disclosed in the investigation."

The next night, in the President's television address to the nation on the Watergate affair, Mr. Nixon said of Richardson: "I have given him absolute authority to make all decisions bearing upon the prosecution of the Watergate case and related matters . . . Whatever may appear to have been the case before . . . justice will be pursued fairly, fully and impartially, no matter who is involved."

Shortly before the President spoke, however, Ehrlichman conveyed to Krogh what he described as "a message from the President," according to The Post's sources.

"Ehrlichman said the President didn't want any more to surface about the Ellsberg investigation," one source said. "He (Ehrlichman) was emphatic that he was speaking for the President."

Specifically what the President did not want disclosed, the sources said, was Krogh's knowledge that the CIA had provided assistance in the

break-in of the office of Ellsberg's psychiatrist and other activities by the White House in trying to determine the source of news leaks deemed harmful to the administration.

On the same Monday that President Nixon was working on his Watergate speech, the sources said, Richardson lunched with Krogh, who described the presidential message conveyed by Ehrlichman.

Krogh also told Richardson all he knew about the White House operation aimed at Ellsberg and that he (Krogh) "was driven by a moral compulsion that this was the right thing to do, not to cover it up but to tell all the stand the consequences," according to one source.

All the sources reported that Richardson at this point became adamant about avoiding the President's request to prevent release of information surrounding the Ellsberg operation.

Richardson told Krogh that he had already gotten the message from the President and made it clear he wasn't going to abide by it," one source said. "He made it clear he intended to countermand the President and just would not obey. He said he would just not heed that order."

Another source said Richardson told Krogh: "I'm not going to participate in a cover-up because it will destroy my role in the Watergate investigation . . . The truth has got to come out."

One of the sources suggested that Krogh's remarks triggered Richardson's recollection of what he had been told by the President regarding "national security matters" and said that Richardson suddenly "expressed horror."

Following the meeting with Krogh, the sources said, Richardson discussed the matter with Assistant Attorney General Petersen, who told him of the President's earlier action in attempting to prevent release of the

Petersen, one source said told Richardson "the truth has to be straightened out" and that he (Petersen) couldn't live with what the President wanted to do. Henry asked Richardson for help and Richardson backed him up."

Both men, all the sources reported, decided that they would have nothing to do with the advice tendered by either the President or Ehrlichman and conveyed their decision to Mr. Nixon.

Exactly how the message was conveyed could not be determined, but one source said Richardson personally discussed the matter with the President and that Mr. Nixon agreed that there should be no further attempts at preventing release of the Ellsberg material.

All of the sources said that at no time did Mr. Nixon suggest any reason except "national security" for preventing release of the information.

On Thursday, the White House delivered guidelines to Krogh expressing the White House position that witnesses testifying in Watergate proceedings "are restricted from testifying as to matters relating to national security."

Krogh, who received a copy of the guidelines, signed an affidavit the next day detailing his knowledge in which he acknowledged full responsibility for the break-in at the office of Ellsberg's psychiatrist.

Developments in 2 Cases

Watergate and immunity: The select Senate committee investigating Watergate will hold its first public hearings May 17 and will move to compel testimony by John W. Dean 3d, the deposed White House counsel, by granting him immunity from prosecution. President Nixon, the White House said, will no longer advise prosecutors to withhold immunity from current or former members of the Administration.

The C.I.A. involvement: Central Intelligence Agency documents made public at the Pentagon papers trial of Dr. Daniel Ellsberg confirmed that Gen. Robert C. Cushman Jr., commandment of the Marine Corps, had ordered, when he was the C.I.A.'s deputy director, that false identity papers and disguises be supplied to E. Howard Hunt Jr., who has confessed to having taken part in the Watergate break-in and the Ellsberg psychiatrist burglary.

James W. McCord Jr., who has been convicted in the Watergate affair, charged that he was under perssure twice before his trial to assert that the break-in was a covert C.I.A. operation.

The forged Diem cables: The White House denied there was any connection between the assertion by President Nixon at a news conference in 1971 that the United States was guilty of "complicity" in the killing of Ngo Dinh Diem, the President of South Vietnam, and a State Department cable to that effect forged by Hunt.

Proxmire and the press: Senator William Proxmire, Democrat of Wisconsin, a frequent critic of the Nixon Administration, charged the press with being "grossly unfair" to the President and with conducting a campaign of "McCarthyistic destruction" in its reporting of Watergate. He spoke after having told a friend that he believed Mr. Nixon was "involved in Watergate up to his ears."

An Attack by Meany: The Administration is "steeped in scandal and twisted by privilege," George Meany, president of the A.F.L.-C.I.O. said. He called for an investigation of the Watergate conspiracy by an independent, non-government panel.

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Hill to Probe CIA Link To Break-In

By Laurence Stern
Washington Post Staff Writer

A major flurry of investigative activity is being launched on Capitol Hill into the Central Intelligence Agency's alleged role in the burglary of the psychiatrist who treated Pentagon Papers defendant Daniel Ellsberg.

Chairmen of three separate Senate and House panels which oversee CIA operations announced yesterday that they would immediately begin inquiries into the episode.

Rep. Lucien N. Nedzi (D-Mich.), chairman of an Armed Services subcommittee on the CIA, disclosed that the agency's director, James R. Schlesinger, confirmed to him yesterday that Marine Commandant Robert E. Cushman Jr. authorized use of CIA equipment in the Ellsberg burglary case.

The equipment was used by the Watergate break-in team headed by former CIA agents E. Howard Hunt Jr. and G. Gordon Liddy to burglarize the office of Dr. Lewis Fielding, Ellsberg's psychiatrist, in connection with the White House investigation of the Pentagon Papers case during 1971.

See CIA, A5, Col. 1

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Hill Inquiries

Focus on CIA

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Nedzi said Schlesinger confirmed to him, in a telephone conversation yesterday, that the CIA equipment was issued to Liddy and Hunt "and that the order emanated from Gen. Cushman." The role of Cushman, who was at the time of the accident deputy director of the Central Intelligence Agency, was disclosed yesterday by The New York Times.

The Michigan Democrat said Schlesinger had also ordered a wholesale review within the agency of the extent of its involvement in the Watergate case and the Ellsberg investigation.

One high-ranking CIA official said the disclosure of the agency's role in the operations of the Hunt-Liddy team under White House direction came as a severe jolt to institutional morale at CIA's Langley, Va., headquarters.

Sen. Stuart Symington (D-Io.), chairman of the Senate's joint CIA oversight committee, announced yesterday of the new development: "We plan to look into it. If true, I don't like it."

Sen. John L. McClellan (D-Ark.), who heads a separate Appropriations subcommittee on operations, said he is calling in top CIA witnesses on Wednesday to testify about the agency's involvement in the Pentagon papers case.

Lead-off witnesses, he said, will be Schlesinger and Dr. Bernard Melloy, chief of the CIA's psychiatry division. Melloy was reportedly ordered by his superiors over his own objections to provide the White House with a psychiatrist profile of Ellsberg.

McClellan announced that former CIA Director Richard Helms, who headed the agency at the time of the Pentagon Papers investigation, will be called to testify later along with Cushman.

The 1947 statute which created the CIA decreed that the agency should "have no police, subpoena, law-enforcement powers or internal security functions," McClellan noted. The statute did, however, assign responsibility to the agency "for protecting internal security functions."

The basic responsibility for domestic surveillance against espionage and sabotage, including breaches of national intelligence, is that of the Federal Bureau of Investigation.

Nedzi said that his Armed Services subcommittee on the CIA will begin hearing witnesses on Thursday "to find out what they know about the situation."

He said he, too, will ask for Helms' return from Iran if the former director is personally implicated in the Pentagon Papers break-in. "If I had to make a guess," he said, "this was not too widely known in the agency."

C.I.A. and Congress Investigate Ellsberg Burglary Authorization

By JOHN M. CREWDSON
Special to The New York Times

WASHINGTON, May 7 —

The Central Intelligence Agency and at least one Congressional committee are investigating a report that Gen. Robert E. Cushman Jr., the Marine Corps commandant who, while serving as the C.I.A.'s Deputy Director, authorized the use of the agency's facilities and equipment by a group of burglars allegedly directed from the White House.

The C.I.A.'s internal inquiry was ordered by its director, James R. Schlesinger, to determine the precise nature of the intelligence agency's role in the bizarre but unproductive break-in at the Los Angeles office of Dr. Daniel Ellsberg's former psychiatrist in September, 1971.

Representative Lucine N. Nedzi, Democrat of Michigan, who heads a new House subcommittee that oversees the activities of the C.I.A., said today that he had spoken with Mr. Schlesinger this morning, who had confirmed that the inquiry had begun.

Linked to Authorization

The New York Times reported today that General Cushman, acting on a request from the White House, had approved the use of C.I.A. disguises, bogus identification papers and secure meeting places by two White House aides assigned to steal the psychiatric records of Dr. Ellsberg, a defendant in the Pentagon papers trial.

The chairman of the Senate Appropriations Committee, Senator John L. McClellan, Democrat of Arkansas, said he planned to begin secret hearings soon on the C.I.A.'s alleged involvement in the burglary, and that Mr. Schlesinger would be called as a witness.

Mr. Nedzi said that the Subcommittee on Intelligence, an arm of the House Armed Services Committee, would also investigate the reports. A spokesman for Senator Henry

Mr. Jackson, Democrat of Washington, said the Senate Government Operations Committee's Subcommittee on Investigations, which Mr. Jackson heads, also planned to look into the charges.

General Cushman, who left the C.I.A. early last year to become commandant of the Marine Corps, was ordered by the Defense Department today not to discuss his reported involvement in the burglary.

The 59-year-old general had planned to hold a news conference today in Rotterdam, the Netherlands, where is is visiting Dutch military installations. Shortly before the session was scheduled to begin, however, an aide announced that the general would have no comment.

The aide added that General Cushman had been directed by the Pentagon to submit an affidavit to the Justice Department on the matter after he returned to Washington.

The unsuccessful burglary at the office of the psychiatrist, Dr. Lewis I. Fielding, was arranged by two men arrested last year in connection with the Watergate bugging, E. Howard Hunt Jr. and G. Gordon Liddy, while both men were employed by the White House. Hunt later pleaded guilty in the Watergate case, and Liddy was subsequently convicted in the same case.

Hunt has told a Federal grand jury investigating the Watergate bugging that the Ellsberg burglary had been supervised by two other White House staff members, Egil Krogh Jr. and David R. Young, both of whom have since left their posts.

Mr. Krogh's former supervisor, John D. Ehrlichman, who resigned last week as President Nixon's chief adviser for domestic affairs, has told agents of the Federal Bureau of Investigation that Hunt and Liddy had been asked to investigate Dr. Ellsberg after the disclosure of

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the top-secret Pentagon papers study by The Times in June, 1971.

Mr. Ehrlichman told the agents, however, that he had not authorized the burglary, which failed to turn up Dr. Ellsberg's psychiatric records, and that when he learned of it, he instructed Hunt and Liddy "not to do this again."

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Hunt: 'I Set About Creating 2 Cables Which Bore on That Period'

By Mr. Silbert [Assistant
U.S. attorney Earl Silbert]:

Q. Mr. Hunt, you're still
under oath.

A. Yes, sir.

Q. And you'll notice that
we have changed reporters.

A. Yes, sir.

Q. Mr. Hunt, you referred,
at the start of your testi-
mony—you made a refer-
ence to a "bag job." Does
that mean a burglary?

A. That means an entry
operation. It's a term used
by the Federal Bureau of
Investigation and the Cen-
tral Intelligence Agency.

Q. Now, while you worked
at the White House, were
you ever a participant or did
you ever have knowledge of
any other so-called "bag
job" or entry operations?

A. No, sir.

Q. Were you aware of or
did you participate in any
other what might commonly
be referred to as illegal
activities?

A. Illegal?

Q. Yes, sir.

A. I have no recollection
of any, no, sir.

Q. What about clandestine
activities?

A. Yes, sir.

Q. All right. What about
that?

A. I'm not quibbling, but
there's quite a difference be-
tween something that's ille-
gal and something that's
clandestine.

Q. Well, in your terminol-
ogy, would the entry into
Mr. Felding's [Daniel Ells-
berg's psychiatrist, Lewis
Fielding] office have been
clandestine, illegal, neither
or both?

A. I would simply call it an
entry operation conducting
under the auspices of com-
petent authority.

A. Well, it would not be
classified as clandestine?

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Following is the text of
E. Howard Hunt's testi-
mony before a federal
grand jury in Washington,
D.C., last month:

Q. All right. Now, did you
ever engage in any other
clandestine operation?

A. Not of that type, no,
sir.

Q. What type did you en-
gage in?

A. The only other one that
comes to mind has to do
with the widely publicized
fraudulent Vietnamese ca-
ble.

Q. Tell us about that?

A. Which to my knowl-
edge is not an illegal activ-
ity.

Q. What did you do?

A. During the course of
the researches, which I per-
formed with the help of the
Department of State, going
over many hundreds of ca-
bles, comparing them with
what actually appeared in
the Ellsberg so-called Penta-
gon Papers.

It became clear to me,
from the State Department
files, that a number of ca-
bles were missing. And that
is to say that the chronologi-
cal files did not contain ca-
bles in chronological se-
quence.

Some of the micro-file—
well, they weren't on micro-
file, but they were greatly
reduced in size, approxi-
mately three by four inches

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from an eight—about his size reduced.

But these small versions had been extracted so that there was not a complete chronology of the period of the Vietnam war immediately prior to and subsequent to the assassination of then-Premier Diem.

This encourage me to have inquiries made at the Central Intelligence Agency as to whether or not their chronological files for 1963 were still intact. I wanted to obtain legal access to their files to see whether or not any of these thinks in the assassination story could be filled in through reference to CIA traffic.

I was told that the Communications Office of the Central Intelligence Agency did not maintain their chronological files for that period of time. I think that more than five years had elapsed and they had been destroyed, not stored at the Department of State.

I also had occasion to inquire—or I had inquiries made of the Pentagon as to whether the so-called back channel had been utilized for any of its missing traffic and was told that no copies had been kept at the Pentagon of this type of traffic that might have taken place between. Let's say, the commanding general in Saigon and the chief of staff to Washington.

I also, with some difficulty, managed to obtain the State Department's file. It was a State Department back channel. It was Secretary of State to the Ambassador, back and forth, and I went through that, satisfied myself that there was nothing of substance in there but, at the same time, I had concluded that a lot of significant traffic was missing.

And there came a time when I mentioned this to Mr. Colson, who I had been directing my researches into the—at the particular period—the Vietnamese war, and told him that, in my opinion, a lot of stuff that should have been there had been extracted.

He said, "How do you account for that?" And I said, "Well, some of the cables that they still have on hand at the Department of State have been sent, with date stamps, saying photographed or duplicated for the John F. Kennedy Memorial Library."

So I said, "Well, obviously, anybody who had been given access to the Department of State file for the purposes of incorporating them into material held by the J. F. K. Library would also have had opportunity to remove any cables that could have been embarrassing to the Kennedy legations."

And he said, "Well, what kind of material have you dug up on the files that would indicate Kennedy complicity?" And I showed him three or four cables that indicated that they had pretty close to pulled the trigger against Premier Diem's head, but it didn't say so in so many words. Inferentially, one could say

there was a high degree of administration complicity in the actual assassination of Diem and his brother."

And he said, "Well, this isn't good enough. Do you think that you could improve on them?"

I said, "Yes, I probably could, but not without technical assistance." After all, I had been given some training in my past CIA career to do just this sort of thing and had done it successfully on numerous occasions, floating forged newspaper accounts, telegrams, that sort of thing.

So he said, "Well, we won't be able to give you any technical help. This is too hot. See what you can do on your own."

So, with the very meager means at my disposal, which were literally a Xerox machine in the White House, a razor blade and a typewriter—which was not the same one as had been used on the original cables—I set about creating two cables which bore on that particular period.

The process was relatively simple. I first of all prepared a cable text. In other words, from many of these cables I could pretty well adjust the text to the type of language that would be used by the man who was the ostensible originator, and altered these, from time to time, until I was satisfied that I had two creditable cables.

getting the bottom line, which had the signatures of the releasing reviewing officers and the originating officers and the heading, which had also the time date stamp on it, which was a crucial thing.

And simply by Xeroxing and re-Xeroxing, I substituted a test for what had previously been a legitimate cable and could use those.

I was not satisfied with the results. I showed them to Colson. He seemed to like them and I said, "These will never stand any kind of scrutiny." I said, "Let's be very sure about that."

And I had asked the FBI to tell me what kind of type face had been used on the original State Department cables and actually a White House cable, because one of them was ostensibly a White House cable, and I found out that it would be impossible for me to get access to a similar type face.

So I knew that this was a technical problem that could not be overcome. So if anybody was going to see these cables, they'd simply have to see them. They could never be published, because after the Alger Hiss case, everyone was typewriter conscious.

So there would just have to be a fast-brush show on a take-it-or-leave-it basis, which I began to believe was the purpose Mr. Colson had in mind.

Not long after I completed these two cables, I got a call from them saying, "There will be a fellow over to see you. I've given him your name. He'll give you a call. His name is Bill Lambert from Time-Life and I want you to talk to him about these cables. Show him these cables. If you want to show him, show them to him up, in your office at the White House, if you want to," he said. "But don't let them get out of your hands."

In due course, Mr. Lambert made contact with me. I believe we spoke first in my office at Mullen Company and we may, on that occasion, have gone directly from Mullen Company over to my office in the Executive Office Building where, to the best of my recollection, I showed him the stack of cables: extracted three or four that I had paper-clipped, including the two that I had fabricated.

Mr. Lambert was quite exultant over the find. Wanted to know if he couldn't take them immediately. I, obvi-

ously, said, "No, you may not, but you may read the text. If you care to, you may copy the text down."

So he spent some time in copying them down on a yellow pad and he never saw the cables again, but he was in constant contact with myself and, I believe, the office of Mr. Colson, trying to obtain facsimiles of the two fabricated cables.

Mr. Colson simply referred him to me and I said I was simply unable to release them to him.

Q. Now, do you know of any other clandestine operations?

A. I can't think of any, sir.

Hunt, Liddy Exceeded Orders, Krogh Says

LOS ANGELES, May 7 (AP)—Following is a partial text of former presidential aide Egil Krogh's affidavit released Monday by the Pentagon papers judge:

Egil Krogh, Jr., of full age, being first duly sworn according to law upon his oath, deposes and says:

... That on or about July 15, 1971, affiant was given oral instructions by Mr. John D. Ehrlichman, assistant to the President of the United States for domestic affairs, to begin a special National Security project to coordinate a government effort to determine the causes, sources, and ramifications of the unauthorized disclosure of classified documents known as the Pentagon Papers.

That Mr. David Young of the National Security Council Staff was assigned to this special project with, him;

That to his information and belief one reason for undertaking an independent investigation centralized among White House staff was that a close personal relationship existed between the then-director of the Federal Bureau of Investigation, J. Edgar Hoover, and Mr. Louis Marx, father-in-law of Dr. Daniel Ellsberg, admitted public source of the Pentagon Papers.

That on affiant's information and belief the establishment of an independent investigatory unit reporting to the White House staff was expressly agreed to by Director Hoover and this agreement manifested in a memorandum from Director Hoover:

That to his information and belief Central Intelligence Agency investigative support was unobtainable for this special National Security project and to the lack of CIA jurisdiction within the Territorial United States;

That in July, 1971, the affiant recommended to Mr. John D. Ehrlichman that Mr. G. Gordon Liddy be employed by the special unit as an investigator and staff assistant, and Mr. Ehrlichman subsequently authorized the employment of Mr. Liddy.

That Mr. E. Howard Hunt was recommended to affiant for assistance on the Pentagon Papers investigation, such recommendation was made to affiant over the telephone by Mr. Charles C. Colson, special counsel to the

That information obtained by the special unit made it imperative to ascertain whether the unauthorized disclosure of the Pentagon Papers was (a) an individual act, (b) the act of a small group, or (c) the result of a wider conspiracy to engage in espionage;

That during the early stages of the investigation, affiant received information suggesting that Dr. Ellsberg did not act alone;

That the affiant was informed by the Federal Bureau of Investigation that the so-called Pentagon Papers were in the possession of the Soviet Embassy, Washington, D.C., prior to their publication by The New York Times newspaper suggesting an effort to aid

and abet an enemy of the United States through the ally.

That shortly thereafter additional public disclosure of classified information related to national security took place, to-wit:

(a) publication of a news story on the Strategic Arms Limitation talks with the Soviet Union, and

(b) publication of a news story on Aug. 12, 1971, regarding a Soviet move to avert a war by entering into a pact with India;

That following the publication of the above-mentioned SALT story, the affiant was personally instructed by President Nixon, in the presence of John D. Ehrlichman, that the continuing "leaks" of vital information were compromising the national security of the United States, and the President instructed the affiant to move ahead with the greatest urgency to determine the source of "leaks."

That the affiant was informed by the CIA that a news story had put in jeopardy the life of an intelligence agent, thus emphasizing the need for increased investigative effort on the part of the affiant's special unit;

That in addition the affiant was informed repeatedly during the months of July and August of 1971 of the extreme threat perceived to be developing by high government officials, because of the possibility of further unauthorized disclosure as to the capacity of the United States government to conduct its foreign affairs and protect its national security;

That efforts to discover the sources had not succeeded;

That affiant's special unit received information from an interview conducted by the Federal Bureau of Investigation with one Dr.

Fielding, former psychiatrist to Daniel Ellsberg, which yielded no information;

That additionally a psychological profile of Dr. Ellsberg, prepared by the CIA, provided no useful information to the affiant's special unit;

That discussions among the special unit were conducted which suggested that information in the possession of Dr. Fielding may hold the key to breaking the impasse;

That individuals who may have participated in a conspiracy with Dr. Ellsberg may have been named;

That a psychological profile could be put together with information derived from Dr. Fielding;

That general authorization to engage in covert activity to obtain a psychological history or ascertain associates of Dr. Fielding was thereafter given to the special unit by John D. Ehrlichman;

That plans for acquiring the information from the office of Dr. Fielding were developed by Mr. Hunt and Mr. Liddy;

That to affiant's understanding and belief a first trip to California was undertaken by Mr. Hunt and Mr. Liddy to determine means for acquiring the information;

That films of the premises of Dr. Fielding's office were brought back by Mr. Hunt and Mr. Liddy following the first trip.

That to affiant's understanding and belief certain of these films were left in a camera belonging to the Central Intelligence Agency and transmitted to the Department of Justice by the Central Intelligence Agency;

That a second trip was undertaken to acquire the information in early September 1971;

That in affiant's supervisory capacity, affiant agreed to the mission with the understanding that Mr. Hunt and Mr. Liddy would obtain the service of certain Cubans to accomplish the mission;

That affiant attached a condition to the mission that Mr. Hunt and Mr. Liddy were not to be in the close proximity of Dr. Fielding's office;

That recent newspaper reports suggesting that an individual had accepted responsibility for accepted responsibility for the entry into two offices on the premises where Dr. Fielding has his office was a completely unknown incident to affiant;

That to affiant's understanding and belief the funds for implementing the effort to acquire the information through an unknown intermediary after a request by affiant to Mr. Charles Colson for the funds;

That to affiant's knowledge affiant did not inform Mr. Colson as to the reason for the request for funds;

That to affiant's understanding and belief the funds totalled \$2,000.00 which to be used for expenses;

That to affiant's understanding and belief, Mr. Hunt stressed to affiant that only expense money would be accepted by those who had been recruited for this effort as this was a contribution to the security of the United States and no profit should be derived;

That to affiant's understanding and belief no information was acquired from the second and final trip regarding any associates of Dr. Ellsberg, a psychiatric background of Dr. Ellsberg, or any other material;

That to affiant's understanding and belief no information of any kind was transmitted to any government agency for use in the prosecution of Dr. Daniel Ellsberg derived from either trip to California as none was obtained;

That upon return from the second trip to California, failure of the objective to acquire information was reported by Mr. Hunt and Mr. Liddy to affiant and photos of destructive activity within an office were displayed to explain the events which had reportedly transpired;

That photographs of Dr. Fielding's apartment were presented by Mr. Hunt and Mr. Liddy with a recommendation that another attempt be made to acquire the desired information;

That no other effort was undertaken to acquire information on Dr. Ellsberg's associates or psychiatric history;

That affiant reported the results of the second trip to California to Mr. John D. Ehrlichman with the recommendation that any additional covert activity be disapproved;

That Mr. Ehrlichman disapproved any further covert activity;

That Mr. Ehrlichman advised affiant that the activity on the second trip to California far exceeded the scope of any covert activity which had been approved in general in advance;

That affiant was instructed to inform Mr. Liddy and Mr. Hunt that no additional covert activity was to be undertaken;

That to his understanding and belief, affiant has had no prior knowledge of any subsequent covert activity alleged to have been undertaken by Mr. Hunt and Mr. Liddy.

Security Dangers Linked To White House Inquiry

Administration Sources Cite Leaks to Explain Approval of Burglary Plot in the Pentagon Papers Case

26
By JOHN HERBERS

Special to The New York Times

WASHINGTON, May 7 —

In the summer and fall of 1971, President Nixon and members of his staff were disturbed and angry about a series of news leaks that they felt involved national security matters.

As a result, the White House ordered extensive investigations by the Federal Bureau of Investigation to determine the source of the leaks. Further, the White House set up its own investigative team, called the "plumbers" for closing such leaks, because those around the President did not believe that the F.B.I. was doing a thorough enough job.

White House sources confirmed today that this was the atmosphere surrounding the President and his top assistants at the time that E. Howard Hunt Jr. and G. Gordon Liddy were authorized to burglarize the office of Dr. Daniel Ellsberg's former psychiatrist.

Danger Cited

According to these sources, there was a feeling that the leaks had got out of hand and posed a widespread threat to the protection of documents that had a direct bearing on national security matters.

The fears expressed in the White House, they said, were heightend by widespread opposition in the country to President Nixon's actions that widened the war in Indochina.

The leaking of classified documents has long been a practice among Washington officials and some officials contended at the time that none of the 1971 disclosures threatened the national security, but the fear of threats to it motivated White House actions, according to Administration officials.

Thus the telephones of reporters and Administration personnel with access to classified documents were tapped. The F.B.I. questioned or attempted to question reporters and officials. The "plumbers" employed a variety of investigative techniques, which in the case of Dr. Ellsberg, included using the facilities of the Central Intelligence Agency.

Although the White House was reported to have ordered some telephone taps on reporters because of leaks early in the Nixon Administration, its big investigation was after the publication of

the Pentagon papers on the Vietnam war in June of 1971. Dr. Ellsberg is on trial on charges of stealing, copying and releasing those papers.

President Nixon was angered by the disclosure and ordered subordinates to find out how they had occurred, according to some of his associates.

In July, while the Pentagon papers case was bubbling, the Nixon White House was further upset by disclosures in The New York Times and other newspapers about details of negotiations between the United States and the Soviet Union on arms limitations and about United States shipment of arms to Pakistan.

The F.B.I. questioned reporters and State Department personnel about the disclosures and were reported to have given some State Department officials lie detector tests in an attempt to learn the source of the leaks.

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Mr. Cleveland _____
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Mr. Gebhardt _____
Mr. Jenkins _____
Mr. Marshall _____
Mr. Miller, E. S. *EMH*
Mr. Soyars _____
Mr. Thompson _____
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At a news conference last Sept. 3, Secretary of State William P. Rogers confirmed that the F.B.I. was investigating the source of these disclosures. "The law makes it quite clear," he said, "that top-secret matter, if divulged, is a criminal offense. When there's a violation of the law, the F.B.I. is the investigative arm that investigates it."

There is no Federal statute that makes it a crime to disclose top-secret information, as such. The Espionage Act of 1917 makes it a crime for a Government official to disclose defense data if the data "could be used to the injury of the United States, or to the advantage of any foreign nation."

Since last fall, no one has suggested publicly that the disclosures had any detrimental effect on American foreign policy or military movements.

The White House was further upset about leaks in December, when Jack Anderson, the columnist, reported information from classified papers regarding the Nixon Administration's position in the Pakistan-India war.

None of the disclosures was believed to have come from the White House staff. They apparently came from persons in executive departments.

Since 1971, leakers of all kinds from the Nixon Administration have been drastically curtailed.

C.I.A. and Congress Investigate Ellsberg Burglary Authorization

By JOHN M. CREWDSON
Special to The New York Times

WASHINGTON, May 7 — General Cushman, who left the Central Intelligence Agency and at least one Congressional committee are investigating a report that Gen. Robert E. Cushman Jr., the Marine Corps commandant who, while serving as the C.I.A.'s Deputy Director, authorized the use of the agency's facilities and equipment by a group of burglars allegedly directed from the White House.

The C.I.A.'s internal inquiry was ordered by its director, James R. Schlesinger, to determine the precise nature of the intelligence agency's role in the bizarre but unproductive break-in at the Los Angeles office of Dr. Daniel Ellsberg's former psychiatrist in September, 1971.

Representative Lucine N. Nedzi, Democrat of Michigan, who heads a new House subcommittee that oversees the activities of the C.I.A., said today that he had spoken with Mr. Schlesinger this morning, who had confirmed that the inquiry had begun.

Linked to Authorization

The New York Times reported today that General Cushman, acting on a request from the White House, had approved the use of C.I.A. disguises, bogus identification papers and secure meeting places by two White House aides assigned to steal the psychiatric records of Dr. Ellsberg, a defendant in the Pentagon papers trial.

The chairman of the Senate Appropriations Committee, Senator John L. McClellan, Democrat of Arkansas, said he planned to begin secret hearings soon on the C.I.A.'s alleged involvement in the burglary, and that Mr. Schlesinger would be called as a witness.

Mr. Nedzi said that the Subcommittee on Intelligence, an arm of the House Armed Services Committee, would also investigate the reports. A spokesman for Senator Henry M. Jackson, Democrat of Washington, said the Senate Government Operations Committee's Subcommittee on Investigations, which Mr. Jackson heads, also planned to look into the charges.

General Cushman, who left the C.I.A. early last year to become commandant of the Marine Corps, was ordered by the Defense Department today not to discuss his reported involvement in the burglary.

The 59-year-old general had planned to hold a news conference today in Rotterdam, the Netherlands, where he is visiting Dutch military installations.

Shortly before the session was scheduled to begin, however, an aide announced that the general would have no comment.

The aide added that General Cushman had been directed by the Pentagon to submit an affidavit to the Justice Department on the matter after he returned to Washington.

The unsuccessful burglary at the office of the psychiatrist, Dr. Lewis I. Fielding, was arranged by two men arrested last year in connection with the Watergate bugging, E. Howard Hunt Jr. and G. Gordon Liddy, while both men were employed by the White House. Hunt later pleaded guilty in the Watergate case, and Liddy was subsequently convicted in the same case.

Hunt has told a Federal grand jury investigating the Watergate bugging that the Ellsberg burglary had been supervised by two other White House staff members, Egil Krogh Jr. and David R. Young, both of whom have since left their posts.

Mr. Krogh's former supervisor, John D. Ehrlichman, who resigned last week as President Nixon's chief adviser for domestic affairs, has told agents of the Federal Bureau of Investigation that Hunt and Liddy had been asked to investigate Dr. Ellsberg after the disclosure of the top-secret Pentagon papers study by The Times in June, 1971.

Mr. Ehrlichman told the agents, however, that he had not authorized the burglary, which failed to turn up Dr. Ellsberg's psychiatric records, and that when he learned of it, he instructed Hunt and Liddy "not to do this again."

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CIA, Marine Chiefs Called by McClellan for Ellsberg Probe

BY RUDY ABRAMSON

Times Staff Writer

WASHINGTON — Sen. John L. McClellan (D-Ark.) Monday summoned the director of the Central Intelligence Agency, the Marine Corps commandant, the U.S. ambassador to Iran and a CIA psychiatric expert to testify on reported CIA links to the burglary of the office of Daniel Ellsberg's psychiatrist.

McClellan, chairman of a Senate intelligence operations subcommittee, said that "serious allegations have appeared in the press regarding purported involvement of the CIA in the Pentagon Papers case; it is the purpose of the subcommittee to hear testimony . . . concerning these charges."

The latest allegation of CIA involvement in the break-in at the Beverly Hills office of Dr. Lewis Fielding was made Monday.

The New York Times reported that Gen. Robert E. Cushman Jr., now commandant of the Marine Corps, had authorized the use of CIA materials and research used in preparation for the burglary. At the time the incident is said to have occurred, Cushman was deputy director of the CIA.

McClellan said the hearings would begin Wednesday with testimony from James R. Schlesinger, the CIA director, and Dr. Bernard Melloy, the top CIA psychiatrist, who is said to have prepared under pressure a behavior profile of Ellsberg at the request of White House aides now

linked with the Beverly Hills burglary.

Cushman left the country last Friday on a 10-day visit to Europe.

(In a dispatch from Rotterdam, Reuters News Service said Cushman refused to comment on the

New York Times story.

(Reuters said Cushman had scheduled a news conference but issued a statement subsequently saying the Defense Department had barred him from commenting. Cushman is in Holland as a guest of the Royal Netherlands Marine Corps.)

Secretary of Defense Elliot L. Richardson refused to comment on the report that Cushman had given CIA cooperation at the request of John D. Ehrlichman, President Nixon's domestic affairs adviser, who resigned last week.

Maj. Gen. Daniel James, an official Pentagon spokesman, refused to say whether Richardson was investigating the matter, either in his capacity as secretary of defense or as the designated attorney general.

Ex-CIA Director

The other witness McClellan wants to question is Richard Helms, the long-time CIA director who became ambassador to Iran and was succeeded by Schlesinger last February.

McClellan said Helms and Cushman would appear later because both are out of the country.

It appeared the McClellan inquiry was just the beginning of still another round of investigations surrounding the Watergate scandal, the Pentagon Papers and political espionage.

Sen. Henry M. Jackson, (D-Wash.), a ranking member of the Senate armed services subcommittee on the CIA, has started looking into the matter, and Rep. Lucien N. Nedzi (D-Mich.), head of a House subcommittee on intelligence operations, said he might start hear-

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ings within the next two or three days.

Schlesinger was reported Monday to have ordered his top aides to get to the bottom of alleged CIA involvement in the Pentagon Papers break-in.

He assured congressional investigators he was "reviewing the whole problem carefully and deeply" and that nothing uncovered would be withheld.

Allegations of CIA involvement in the Ellsberg case began last week when E. Howard Hunt Jr., a former CIA agent arrested in the Watergate bugging, told a grand jury of using faked papers and disguises provided by CIA's clandestine operations department.

He said that when the burglary of the psychiatrist's office did not produce any files on Ellsberg, he arranged through White House aide David Young to have a CIA expert produce a profile on the Pentagon Papers defendant.

The New York Times report said Cushman had been questioned by the FBI and was said to have accepted responsibility for assisting Hunt and G. Gordon Liddy in preparing for the burglary.

The report said Hunt first went to the CIA for help and was told it could not be provided without higher authority. It quoted unnamed sources as saying Hunt then went to White House staff member, Egil (Bud) Krogh, who took the matter to Ehrlichman.

Ehrlichman was reported to have called Cushman, who agreed that the CIA would lend assistance.

Cushman, who left the

CIA post to become commandant of the Marine Corps and a member of the Joint Chiefs of Staff in 1971, served four years as national security adviser to Mr. Nixon when he was Vice President.

The report that Ehrlichman had interceded with Cushman to obtain CIA help for the undercover investigation of Ellsberg seemed in direct conflict with Ehrlichman's statements to the FBI.

In a statement introduced at Ellsberg's trial, Ehrlichman said he had not known anything of the Beverly Hills break-in until after it happened. He said he had warned Krogh and the others not to do it again.

In grand jury statement released yesterday, however, Krogh contended that Ehrlichman had ordered him to begin covert operations in Los Angeles and that he authorized a team to prepare a profile on Ellsberg. He said the operation began after President Nixon personally had urged him to press hard on tracing down the Pentagon Papers leak.

In announcing his hearings late Monday, McClellan indicated he was concerned about a sensitive matter already raised by other members of Congress — the question of whether the CIA had violated the letter and spirit of the National Security Act, which says the agency "shall have no police, subpoena, law enforcement powers, or internal security functions."

Security Dangers Linked To White House Inquiry

Administration Sources Cite Leaks to Explain Approval of Burglary Plot in the Pentagon Papers Case

By JOHN HERBERS

Special to The New York Times

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As a result, the White House ordered extensive investigations by the Federal Bureau of Investigation to determine the source of the leaks. Further, the White House set up its own investigative team, called the "plumbers" for closing such leaks, because those around the President did not believe that the F.B.I. was doing a thorough enough job.

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Danger Cited

According to these sources, there was a feeling that the leaks had got out of hand and posed a widespread threat to the protection of documents that had a direct bearing on national security matters.

The fears expressed in the White House, they said, were heightened by widespread opposition in the country to President Nixon's actions that widened the war in Indochina.

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Central Intelligence Agency.

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The F.B.I. questioned reporters and State Department personnel about the disclosures and were reported to have given some State Department officials lie detector tests in an attempt to learn the source of the leaks.

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There is no Federal statute that makes it a crime to disclose top-secret information, as such. The Espionage Act of 1917 makes it a crime for a Government official to disclose defense data if the data "could be used to the injury of the United States, or to the advantage of any foreign nation."

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Hunt Lays Forgery to Colson

By LINDA DEUTSCH

Associated Press

LOS ANGELES (AP) — Watergate conspirator E. Howard Hunt has testified that special presidential counsel Charles W. Colson directed him to forge cablegrams linking President John F. Kennedy to the killing of South Vietnamese President John F. Kennedy to the killing of South Vietnamese President Ngo Dinh Diem.

Hunt, in Watergate grand jury testimony released here yesterday by the Pentagon Papers trial judge, said he had found enough in State Department files to hint at Kennedy involvement in the 1963 assassination. But he said Colson declared that wasn't "good enough" and ordered the forgeries.

In Washington, Colson issued a statement denying that he had ordered Hunt to fabricate cablegrams.

U.S. District Court Judge Matt Byrne released the Hunt testimony as part of the mounting evidence of government involvement in the Pentagon papers case and the prosecution of codefendant Daniel Ellsberg.

HUNT SAID he was working on a White House probe of the Pentagon papers leak in 1971 when he spotted documents that might be used to embarrass the late President Kennedy's family. He said some documents also appeared to be missing, and he figured those would be the most damaging.

Hunt said he relayed this information to Colson, and

Hunt quoted Colson as saying, "Well, what kind of material have you dug up on the files that would indicate Kennedy complicity."

"... I showed him three or four cables that indicated that they had pretty close to pulled the trigger against Premier Diem's head, but it didn't say so in so many words," Hunt said in testimony before the grand jury last Wednesday.

"Inferentially, one could say that it was a high degree of administration complicity in the actual assassination of Diem and his brother."

He recalled that Colson said, "Well, this isn't good enough. Do you think you could improve on them?"

"Isaid, 'Yes, I probably could, but not without technical assistance,' Hunt testified, noting that as a former CIA agent he had been given training in "floating forged newspaper accounts, telegrams, that sort of thing. ...

"So he, Colson, said, 'Well, we won't be able to

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give you any technical help. This is too hot. See what you can do on your own "

HUNT THEN detailed how he used a Xerox machine, razor blades and a typewriter and "I set about creating two cables which bore on that particular period."

In early November 1963, Diem and his brother Ngo Dinh Nhu were shot to death during a coup. The Pentagon Papers study of the Vietnam war shows that Ambassador Henry Cabot Lodge and other U.S. officials supported the coup plans but the Kennedy administration has not been linked to the Diem assassination that followed, according to standard interpretations of the 1963 events.

The 42-year-old Ellsberg and Anthony J. Russo, 36, are charged with espionage, conspiracy and theft for copying the Pentagon Papers in 1969. Ellsberg has admitted leaking them later to the news media.

HUNT SAID the forging of cables was "simple" except for one hitch — the FBI could not get him a typewriter with the same typeface used for such cables.

"I was not satisfied with the results," said Hunt. "I showed them to Colson. He seemed to like them, and I said, 'These will never stand any kind of scrutiny.' I said, 'Let's be very sure about that.' They could never be published, because after the Alger Hiss, everyone was typewriter conscious."

Thus, Hunt said, it was

decided anyone shown the cables would get a "fast brush" viewing, "which I began to believe was the purpose Mr. Colson had in mind."

Hunt said he soon received a call saying a newsman, William Lambert of Time-Life, would be sent over to see the cables. Hunt said that when Lambert arrived he was shown the forgeries.

"Mr. Lambert was quite exultant over the find," Hunt testified. But, Hunt said, while he permitted Lambert to copy the text of the forgeries, he would not allow the newsman to take copies.

Lambert reportedly tried for a year to verify the Hunt cables, could not do so, and never published them.

INSISTING that all dis-

~~coveries~~ in his probe of White House and Watergate links to the trial be made public, Byrne also released a lengthy affidavit from former White House aide Egil Krogh, who verified that he headed the White House "plumbers" unit assigned to undercover work on the Pentagon papers leak to news media.

Krogh admitted he approved plans to burglarize the office of Ellsberg's psychiatrist and said he made the decision sometime after a meeting with President Nixon.

He said that at that meeting Nixon had stressed the importance of plugging leaks of classified data to news media. He did not say that the President had knowledge of the burglary plan by Hunt and Gordon Liddy.



CHARLES COLSON

The CIA and Ellsberg

On and on come the ugly revelations, the almost daily disclosures of how this nation's political and judicial processes have been manipulated and corrupted. Now we learn that the Central Intelligence Agency shares heavily in the responsibility for the Ellsberg case, which if not directly related to Watergate nevertheless helped set the stage for it and is indisputably part of the same poisonous syndrome.

Start with the premise that, for its own purposes, the CIA had no interest in digging up damaging information on Daniel Ellsberg and his role in leaking the Pentagon papers in June, 1971. But the White House surely did. And someone at the White House, possibly John Ehrlichman, induced someone high at CIA, probably General Robert E. Cushman, to authorize the use of the agency's clandestine services in the burglary of the office of Ellsberg's psychiatrist. That happened in September, 1971, while Richard Helms was still head of CIA and two months before General Cushman left his post as deputy director of the agency to become commandant of the Marine Corps. Meanwhile, and just as disturbing, the head of CIA's psychological assessment unit was directed (by whom?) to cooperate with the White House in working up a psychological profile of Ellsberg.

At this point, the CIA-Ellsberg episode is subject to any number of interpretations. Loose threads and unanswered questions are everywhere. Yet even an interpretation most favorable to the agency leads to conclusions that are devastating.

The CIA, in brief, has been used and compromised and discredited in somewhat the same way that the FBI, under Patrick Gray, was used and compromised and discredited in the

Watergate investigation. Perhaps it was the guiltier of the two. For the CIA lent its offices to the perpetration of a shoddy crime, to the trampling of civil liberties and to a domestic surveillance operation that by law it had no business conducting even indirectly.

It is difficult to believe that Helms, a canny and professional man, would have known all this beforehand and consented to such an improbable venture as the Hunt-Liddy burglary of the psychiatrist's office. Of course, anything is possible, as the nation has learned with relentless regularity the last few weeks.

General Cushman, even if his implication in the affair can be partially explained as unthinking, has a great deal to answer for. He is, to be sure, a distinguished military officer. He is also a longtime friend and supporter of the President's. Those two things need not have been incompatible. But in this case, apparently, they were. In the anything-goes pattern of Watergate, an otherwise decent man appears to have blocked off conscience and good judgment, and gone along with whatever the White House requested.

At first the Watergate scandal was said to be the work of a few ideological zealots. Lately, it has been fashionable to lay the blame on men close to the President with a super-loyal, ad-agency turn of mind. But the web of Watergate-Ellsberg spreads much farther than that. In the FBI, in Justice, now in the CIA, it involves men and vital institutions the American public should have had every reason to trust, but now do not. Aside from the diminished stature of the presidency itself, that is what is hardest to take.

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Director Confirms CIA Supplies Went to Hunt

BY OSWALK JOHNSTON
Star-News Staff Writer

James R. Schlesinger, the newly installed CIA director, has confirmed privately that the CIA supplied a camera, disguises and false documents to Watergate conspirator E. Howard Hunt before the 1971 bread-in at the office of the psychiatrist who had once treated Daniel Ellsberg.

Schlesinger, who offered the confirmation in a telephone conversation yesterday with Rep. Lucien N. Nedzi, D-Mich., chairman of the House Arms Services subcommittee on intelligence, acknowledged that Gen. Robert E. Cushman Jr., then deputy director of the CIA, ordered the supplies, Nedzi said.

Confirmation that Cushman, now Marine Corps commandant, authorized clandestine supplies for Hunt and fellow conspirator G. Gordon Liddy in their administration-directed probe of the Pentagon Papers leak, emerged from an internal probe now under way at the CIA, Nedzi was told.

Still unconfirmed is Hunt's testimony to the Watergate grand jury that the CIA also gave Hunt, Liddy and the team of Cuban emigres recruited for the Ellsberg burglary operational assistance, two "safe-house" rendezvous points in Washington and an untraceable

"Sterile" telephone number to call if help was needed.

(Cushman has been ordered by the Defense Department not to discuss his alleged involvement in the burglary. He failed to show up for a scheduled news conference at Rotterdam yesterday, where he is touring Dutch defenses. An aide announced the general would have nothing to say.

(The aide said Cushman had been ordered to submit an affidavit to the Justice Department on the matter when he returns here.)

Nedzi, concerned that CIA activities in the case may have violated laws banning the agency from domestic operations, is planning a subcommittee investigation this week. Sens. Stuart Symington, D-Mo., and John L. McClellan, D-Ark. also announced yesterday separate probes of the incident.

The State Department, meanwhile, has offered separate confirmation of another aspect of the rapidly developing case. Officials acknowledged late yesterday that Hunt in 1971 had free access to State Department cables relating to the 1963 coup in which South Vietnamese President Ngo Dinh Diem was assassinated.

According to a sketchy State Department version of the incident, officials acceded to White House

request that Hunt be given unlimited access to the department's file of cable traffic to and from Saigon during 1963.

Hunt worked in the file room during late September and early October of 1971, officials recalled, and he was allowed to make photo copies of as many cables as he choose.

Some of these copies may have provided the raw material for cables Hunt later fabricated, allegedly on orders from former White House Special Counsel Charles W. Colson, to implicate President John F. Kennedy in the Diem assassination.

According to grand jury testimony released in Los Angeles by Federal District Judge W. Matthew Byrne Jr., Hunt plowed through several thousand state Department cables in order to hunt plowed through several thousand State Department cables in order to "verify the authenticity of materials that had already appeared in the press" in the Pentagon case.

The actual regulations under which the CIA has operated are set forth in a series of highly classified directives from successive presidents and national security councils over the years — from the Truman administration to the present.

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These are sometimes collectively referred to as the "secret charter." Glimpses of this charter have surfaced occasionally, especially when domestic operations of the CIA have been challenged. In a case involving an Estonian emigre employed as a CIA counter intelligence agent that reached the Supreme Court two years ago, it was revealed in an affidavit signed by Helms himself that the deputy director for plans (ie. chief of clandestine operations)

has "specific responsibility — for the conduct of the agency's counter intelligence operations."

As an organizational matter, the support Hunt claims he got from the CIA in the Ellsberg burglary would have been carried out under the deputy director of plans, presumably under the heading "counter-intelligence operations."

Under the 18-month-old reorganization of the CIA, Cushman, as deputy director of the agency, would have had unquestioned authority to order the camera and other materials and probably to offer operational support as well.

The burglary of Ellsberg's psychiatrist took place in September 1971, however, some two months before the reorganization plan was announced by President Nixon, so the line of authority may not have been that clearly defined.

Helms himself has privately assured Nedzi and other congressional overseers of the CIA that he had no advance knowledge of the Watergate break-in, and the agency through an official announcement has disclaimed any advance knowledge of the Ellsberg break-in.

In his only publicly recorded reference to the Watergate case, Helms, now ambassador to Iran, last February admitted to members of the Senate Foreign Relations Committee that both Hunt and James W. McCord, another convicted Watergate conspirator, were former CIA agents. He added, in a voice verging on anger:

"They had all retired. They had left. I have no control over anybody who has left . . . they had both been retired at least two years."

Despite Schlesinger's limited confirmation that Hunt, himself a former CIA operative in the clandestine services or "dirty tricks" division of the agency, enjoyed CIA support in the burglary of Ellsberg's psychiatrist, serious questions remain.

The distinction between merely supplying equipment, reportedly on White House orders, and actually lending operational support could be crucial, according to informed sources in the intelligence community.

The supplying of equipment is viewed as a routine administrative matter that would have carried out without question upon orders of Cushman, who was number two in the agency as deputy director, under Richard M. Helms, the then CIA director.

A request for agency cooperation in a government-wide probe of a national security leak such as the Pentagon Papers would be regarded as "normal administrative stuff" once sources observed. "The fact the White House was trying to find it about those leaks was hardly something the agency would be unresponsive to."

CIA participation in actual support of the burglary team, through the supply of safe houses and a secure telephone contact such as Hunt described could be more serious, however, since a violation of federal law might have been involved.

Nedzi and other congressmen charged with overseeing CIA activities are keenly sensitive to a proviso in the 1947 National Security Act which expressly forbids the CIA to engage in domestic "internal security functions."

Federal courts have sometimes favored the agency with a liberal reading of the law, however. The same act empowers the agency to "protect intelligence sources and methods from unauthorized disclosure," and this clause has been interpreted to authorize some domestic counter-intelligence activity, even though counter intelligence is technically the exclusive province of the

FBI.

Mr. Felt _____
 Mr. Baker _____
 Mr. Callahan _____

Nixon Is Said to Have Resisted Disclosures

2 ATTEMPTS CITED

President Reportedly Reversed Stand on Advice of Aides

By SEYMOUR M. HERSH

Special to The New York Times

WASHINGTON, May 7 —

President Nixon, invoking national security, sought on at least two occasions within the last two weeks to prevent the release to the court of details of the burglary at the office of Daniel Ellsberg's psychiatrists, sources close to the Watergate case said today.

On both occasions, the President was said to have reversed himself after getting contrary recommendations from key advisers and permitted the information to be forwarded to the Federal Court in Los Angeles where Dr. Ellsberg is on trial.

The advice to the President reportedly came from Henry E. Petersen, the Assistant Attorney General who was placed in sole charge of the Watergate investigation in late March, and Secretary of Defense Elliot L. Richardson, who was nominated last week to be Attorney General.

Called "Irresponsible"

High White House officials characterized as "irresponsible" the reports that the President had at first opposed the release of the details of the break-in.

The reports of the two Presidential attempts at delaying were provided by some of the principals, lawyers and Justice Department officials.

These sources said that the first Presidential attempt to postpone release of the operation came after the Justice Department received a memo on April 16 or 17 from Earl J. Silbert, the chief prosecutor in the case.

This memo, the sources said, related that two members of the team that later broke into the

Watergate offices of the Democrats last June 17 — E. Howard Hunt Jr. and G. Gordon Liddy — had, acting under White House orders, attempted to burglarize the Beverly Hills office of Dr. Ellsberg's psychiatrist in early September, 1971. That information was eventually transmitted to California on April 25, the sources said.

Told By Ehrlichman

The second attempted delay, the sources said, came last Monday after Mr. Krogh was told by John D. Ehrlichman, the President's assistant for domestic affairs, that "the President doesn't want any more of this to surface for national security reasons."

The White House issued guidelines last Thursday to Egil Krogh Jr., a former Presidential aide who has said that he authorized the California break-in, telling him that he was free to testify regarding steps taken about Dr. Ellsberg. However, it was reported that the guidelines advised Mr. Krogh that he was not authorized to discuss the details of specific leaks or any information about specific national security concerns.

In an affidavit released today by the Los Angeles court, Mr. Krogh told of receiving a report from the Federal Bureau of Investigation indicating that the Pentagon papers had been in the possession of the Soviet Embassy in Washington prior to their publication in June, 1971, in The New York Times. The papers are a secret Pentagon study of the Vietnam war.

The affidavit also referred to a Times article concerning the United States position in the strategic arms limitation talks.

It was this kind of information, White House sources indicated, that was considered too vital to national security by President Nixon to be transmitted to the judge in the Ellsberg case.

Mr. Krogh refused today to comment on the report. One White House source formerly associated with Mr. Ehrlichman, who resigned last week, said, however, "What's the deal? There's no crime

"Even if it was a cover-up," the source added, "it was a cover-up of the Ellsberg burglary and it was covered up for national security reasons."

The Hunt-Liddy break-in of the psychiatrist's office was said to have been disclosed to Mr. Silbert and his Colleagues by John W. Dean 3D, the White House Counsel who resigned — or was dismissed — last week, during an unannounced meeting with the prosecutors on April 15. Mr. Dean is known to have met with the prosecutors on April 6.

Within a day or two of the April 15 meeting, sources said, Mr. Silbert, fully aware of the implications of Mr. Dean's statement for the Ellsberg trial forwarded his memo to Mr. Petersen, who was subsequently reportedly told by president Nixon not to release it.

"The President personally put the lid on it," said one informed source.

Required to report

The immediate Justice Department issue of what to do was dictated by what is known as the Brady rule, the source said, which holds that prosecutors are required to report all exculpatory information to the defense in a criminal trial.

Friends of Mr. Petersen said that he had pondered about the Presidential order for a few days and finally decided that "he just couldn't live with himself" if he withheld the information about Hunt and Liddy. So they said he took the problems to Attorney General Richard G. Kleindienst, who — after hours of debate — agreed that the matter should be taken directly to Mr. Nixon.

Mr. Nixon agreed that the information should be forwarded, the sources said, and on April 26 David Nissen, the Government prosecutor in the Ellsberg case, submitted the Silbert memo to Federal Judge William Matthew Byrne Jr. The next day, the judge released the information — which told of the burglary — and ordered an

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immediate Government inquiry. agency was refusing to make Judge Byrne's decision to release the memo is said to have angered many officials in the Justice Department and White House.

That same Friday afternoon, reliable sources said, Mr. Ehrlichman and H. R. Haldeman, the White House chief of staff who also resigned last week, were met in their offices by F.B.I. agents on their return from a trip to Mississippi with the President.

Gave Data to F.B.I.

Those sources said that Mr. Ehrlichman subsequently told the agents that he had been responsible for ordering a secret White House investigation into the psychological and moral background of Mr. Ellsberg shortly after publication of the Pentagon papers. They said Mr. Ehrlichman told how that operation, which he said was headed by Mr. Krogh and

David R. Young Jr., a former member of the National Security Council, soon employed Hunt and Liddy to begin a series of covert operations.

A summary of Mr. Ehrlichman's statement to the F.B.I. also was forwarded by the Justice Department to Judge Byrne, who released it to the defense last Tuesday. In it, Mr. Ehrlichman was quoted as saying that he had learned of the burglary attempt by Hunt and Liddy after it took place and told them "not to do this again."

Before the public release of the F.B.I. interview, Mr. Krogh—who was named Under Secretary of Transportation late last year—was reportedly told of it. Mr. Krogh, who is 34 years old, then is said to have decided to tell everything he knew, presumably including specific details about the high-level involvement of Central Intelligence Agency officials in the operations against Mr. Ellsberg.

Cushman's Role

The New York Times reported today that Gen. Robert E. Cushman Jr., the Marine Corps commandant who was deputy director of Central Intelligence in mid-1971, authorized the use of C.I.A. material and research for the burglary attempt. General Cushman allegedly did so at the request of Mr. Ehrlichman.

One reliable source, explaining the White House decision not to use the F.B.I. in the Ellsberg investigation, said that Mr. Ehrlichman became convinced in mid-1971 that the

the Pentagon papers a primary made public today.

This was done, the sources said, under guidelines drafted by Leonard Garment, Mr. Nixon's newly named counsel, calling on him not to disclose national security information.

Those guidelines, issued last Thursday and described by the White House as being designed to minimize the use of executive privilege among Presidential aides testifying in the Watergate scandal, included the following second point:

"Witnesses are restricted from testifying as to matters relating to national security not by executive privilege, but by laws prohibiting the disclosure of classified information (for example, some of the incidents which gave rise to concern over the applicability of such laws should therefore be determined by each witness and his own counsel."

Richardson Is Told

A few days later, sources said, Mr. Krogh decided to discuss the matter with Mr. Richardson and, over lunch, told him all he knew about the initial operation and the President's insistence that further details not be revealed. Mr. Richardson, the Secretary of Defense, had been placed in charge of the over-all Water-

gate investigation by the President with his appointment as Attorney General.

Mr. Richardson reportedly disagreed with the President's position on national security in connection with the Hunt-Liddy operations.

As recalled by one source with knowledge of the conversation, Mr. Richardson told Mr. Krogh: "I'm not going to participate in a cover-up because it will destroy my role in the Watergate investigation. I'm not going to follow through on the President's orders."

"The truth has got to come out," the source quoted Mr. Richardson as telling Mr. Krogh.

Mr. Richardson refused to comment when asked today about the luncheon meeting with Mr. Krogh.

Mr. Krogh, apparently fortified by this meeting, decided to draft the affidavit that was

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Date **MAY 8 1973**

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Nixon Reportedly Moved to Suppress Break-in Data

New York Times News Service

President Nixon, citing national security, sought on at least two occasions within the past two weeks to prevent the release of details surrounding the burglary at the office of Daniel Ellsberg's psychiatrist, sources close to the Watergate case report.

Nixon, however, reversed his position on revealing the details after receiving further counsel from members of his staff and the Justice Department, sources say.

According to the sources Nixon felt that some details surrounding the Pentagon Papers case and particulars of the U.S. bargaining position in the strategic arms limitation talks which would likely surface in an exploration of the motive behind the break-in constituted a risk to national security if released.

The counter-advice to the President reportedly came from Henry E. Petersen, the assistant attorney general placed in sole charge of the Watergate investigation in late March, and Secretary of Defense Elliot L. Richardson, who was nominated last week to be attorney general.

High White House officials characterized as "irresponsible" the reports that the President had at first opposed the release of the details of the psychiatrist's office break-in.

Sources, however, said the first attempt to postpone release of the information came after the Justice Department received a memo in mid-April from Earl J. Silbert, the chief prosecutor.

This memo, the sources said, related that Hunt and G. Gordon Liddy had, acting under White House orders, attempted to burglarize the Beverly Hills office in early September 1971. That information was eventually transmitted to California April 25.

(Atty. Gen. Richard G. Kleindienst said today that the President "did not hesitate one moment" about sending the memo to the Ellsberg trial after the attorney general brought it to his attention.

Kleindienst said he personally met with the President April 25 after the Justice Department had conducted an intensive internal inquiry to determine whether any information from the burglary had been used in the government's prosecution of the case.

("The first time the President knew about it (the memo)," Kleindienst said, "was when I went over and told him.")

The second attempted delay, the sources said, came April 30 after former White House aide Egil Krogh was told by John D. Ehrlichman, until that day the President's assistant for domestic affairs, that "the President doesn't want any more of this to surface for national security reasons."

IN AN AFFIDAVIT released yesterday by the Los Angeles court, Krogh told of receiving an FBI report indicating that the Pentagon Papers had been in the possession of the Soviet Embassy in Washington prior to their publication in June 1971 in the New York Times.

The affidavit also referred to a Times article concerning the United States' position in the strategic arms limitation talks.

It was this kind of information White House sources indicated, that was considered too vital to national security by Nixon to be transmitted to the judge in the Ellsberg case.

PETERSEN'S friends said he had pondered the presidential order for a few days and finally decided that "he just couldn't live with himself" if he withheld the information. So, they said, he took the problems to Atty. Gen. Richard G. Klei-

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'dienst, who — after hours of debate — agreed that the matter should be taken directly to Nixon.

One reliable source, explaining the White House's decision not to use the FBI in the Ellsberg investigation, said Ehrlichman became convinced in mid-1971 that the agency was refusing to make the Pentagon Papers a primary case because of the close relationship between the late J. Edgar Hoover and Louis Marx, New York toy manufacturer whose daughter, Patricia, was dating Ellsberg and later married him.

It was Ehrlichman who was reported to have relayed Nixon's alleged view to Krogh that further details about the Ellsberg break-in should not be revealed for national security reasons.

A FEW DAYS later, sources said, Krogh decided to discuss the matter with Richardson and told him all he knew about the operation and the President's insistence that details not be revealed. Richardson had just been placed in charge of the over-all Watergate investigation by the President.

Richardson reportedly disagreed with the President's position on national security in connection with the Hunt-Liddy operation, and — as recalled by one source with knowledge of the conversation — told Krogh he was not going to participate in a cover-up because it would destroy his role in the Watergate investigation. He said he would not follow through on the President's orders.

Krogh, apparently fortified by this meeting, decided to draft the affidavit that was mailed to California and made public yesterday.

(Mount Clipping in Space Below)

Ex-Convict's Break-in Claim False, Ellsberg Attorneys Say

BY WILLIAM FARR

An ex-convict who Beverly Hills police claim confessed in 1971 to breaking into the office of Daniel Ellsberg's psychiatrist could not have committed the burglary because he was in jail at the time. Pentagon Papers trial defense attorneys said Sunday.

According to Los Angeles County Probation Department reports obtained by the lawyers, Elmer Davis was arrested Aug. 26, 1971, on a petty theft charge, pleaded guilty and was not released until Sept. 5.

The burglary at the 450 N. Bedford Drive office of Dr. Lewis J. Fielding took place on Sept. 3 or Sept. 4 of the 1971 Labor Day weekend.

Testifying before a Washington, D.C., grand jury last week, former White House consultant E. Howard Hunt told of participating in the burglary of Fielding's office on that weekend.

Hunt testified that the burglary was authorized by then White House aide Egil (Bud) Krogh. Hunt said he planned the burglary with another convicted Watergate conspirator, G. Gordon Liddy, and the actual entry was made by three Cubans recruited in Miami.

A 37-page excerpt of Hunt's grand jury testimony was provided to U.S. Dist. Judge Matt Byrne and he turned it over to the Ellsberg defense team Friday. Krogh also has submitted an affidavit admitting his part in the incident.

Commenting on the probation records that reportedly show Davis to have been incarcerated at the time of the break-in, defense lawyer Leonard Weinglass said:

"This evidence completely exonerates Elmer Davis. It is an indictment of the Beverly Hills police department method of 'cleaning up the books.' Davis' innocence was easily ascertainable at the time of his arrest."

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I-3 Los Angeles Times
Los Angeles, Calif.

Date: 5/7/73
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Author: William Farr
Editor: William F. Thomas
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"This information also was available to Pentagon Papers trial prosecutor David Nissen when he turned over the police department records to Judge

Byrne last Tuesday. By simply giving the judge these records, the government attempted to cast doubt on the fact that Hunt and Liddy burglarized Ellsberg's doctor's office.

"We regard this conduct as a blatant example of the government's contempt for Judge Byrne's investigation of the burglary and related criminal acts."

The 45-year-old Davis was arrested Oct. 7, 1971, on a charge of burglarizing a dress shop. While in custody, he confessed to the Fielding office break-in, according to detectives' reports.

However, Davis complained in a Nov. 12, 1971, letter sent to a Beverly Hills police captain that he had been offered a deal to "cop out" to numerous burglaries, including the one at Fielding's office.

According to Davis' letter, he refused to confess to several burglaries even though he was offered a deal to be prosecuted only for petty theft if he would cooperate.

Officer Criticism

In that letter, Davis complained that the action of a detective handling the case "typifies the classic example of the crooked cop, who due to his greed for graft and his overall inability to solve criminal cases handed him in accordance with the very law he is supposed to uphold, will resort to any mean, base and despicable act to gain a conviction."

Davis is now serving time at Folsom prison on an unrelated parole violation. His eight-page criminal "rap sheet" shows 90 arrests, many for narcotics violations, dating back to 1942.

A Beverly Hills police spokesman, informed of the claim by Weinglass, replied, "We have sealed that file and turned it over to the FBI so we would have no immediate way of checking it out."

Dist. Atty. Joseph Busch said his office is looking into the "Davis aspect of the case" as part of an investigation to determine whether any of the Watergate scandal figures should be prosecuted locally.

WASHINGTON CLOSE-UP

More Than One Can Play

By JUDITH RANDAL

A20
The burglary of the office of Daniel Ellsberg, psychiatrist — a leading cause of the dismissal of the Pentagon Papers trial last week — was on its face a crime. But in a larger sense it was worse than a crime; it was a folly.

People in the White House who directed the depredation wanted a "psychiatric profile" of the man who had made public the government's ill-advised plans for the Vietnam War. But in seeking to understand Ellsberg by sending operatives clandestinely into the office of Dr. Louis Fielding, they not only betrayed their public trust to uphold the law but, more to the point, revealed a basic lack of understanding of what psychiatric treatment is all about.

It is possible, no doubt, to obtain a fairly accurate physical profile of an individual by rifling the files of his internist. The files would show, for example, his blood pressure, his weight and his bodily complaints, if any, at the time of the latest physical examination. But psychiatrists — especially those who are psychoanalysts, like Fielding — do not keep records of the kind that would reveal hard-and-fast data for political purposes. Indeed, beyond noting a patient's name, address and telephone number, many keep no records at all.

The reason for this is that although the events in a person's life and the people who figure in it are, of course, relevant to a patient's personality, it is what transpires between the analyst and the analysand over a considerable period of time that really counts.

Short, then, of planting a hidden microphone or videotape camera and recording the interplay of the therapeutic sessions —

which cannot necessarily now be put past the White House — this probably would have been the only way to get access to meaningful material about Ellsberg in Fielding's office.

★

The purpose of psychotherapy, of course, is to provide the patient with a human sounding board through whom he can come to understand himself, whereas the men who set the White House's burglars on their errand were seeking a third-party understanding of their quarry. Had they only realized it, this could have been obtained more satisfactorily and in a more rational context by other and legal means.

During World War II, for example, the Office of Strategic Services — a forerunner of the Central Intelligence Agency — constructed a profile of Adolf Hitler by setting professional psychiatrists the task of analyzing the dictator's behavior through study of his writings, still and motion pictures and his spoken voice. Almost certainly, the same kind of "psyching" of Soviet and Chinese leaders is going on in this country today.

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Mr. Callahan _____
Mr. Cleveland _____
Mr. Conrad _____
Mr. Gebhardt ☒
Mr. Jenkins _____
Mr. Marshall _____
Mr. Miller, E. S. ☒
Mr. Soyars _____
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Mr. Walters _____
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Mr. Kinley _____
Mr. Armstrong _____
Mr. Bowers ☒
Mr. Herington ☒
Ms. Herwig _____
Mr. Mintz _____
Mrs. Neenan _____

Mr. Conmy ☒
Mr. Eardley ☒

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The Washington Post Times Herald _____

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The New York Times _____

The Daily World _____

The New Leader _____

The Wall Street Journal _____

The National Observer _____

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The important thing to be remembered here is that more than one can play this game and that more significant than what Fielding's files might have told the White House about Ellsberg is what the break-in itself and the not wholly unrelated events of the Watergate might tell the world and its governments about the people at the apex of power here in the United States.

Mindful of the furor that ensued when a now-defunct magazine invited psychiatrists to comment on the psychological suitability of Barry Goldwater for the White House during the 1964 presidential campaign, mental health pro-

fessionals have been reluctant to comment about this issue publicly. But when guaranteed anonymity, some psychiatrists will try to make an orderly fabric out of the tangled skein exemplified by Ellsberg and Watergate.

One such doctor who has had considerable experience in psychiatric profiling, for example, notes that brute force and strong-arm methods have characterized the Nixon administration since its inception and that once it began to apply this kind of thinking in one area, it tended to become incapable of not applying it in others, whether or not this was appropriate.



This psychiatrist believes that the origins of such a consistent pattern of conduct are traceable initially to childhood insecurity, feelings of self doubt and powerlessness, and that the need to dispel this underlying lack of confidence never entirely disappears — no matter how great the successes won. (The President's "pitiful helpless giant" remark on the occasion of the U.S. invasion of Cambodia, for example, can in this light be seen as revealing a man more than normally prone to become uneasy over the prospect of losing control over both himself and events.)

If nothing else is true, then, of the government's role in the Ellsberg case, of Watergate and of the whole gambit of bizarre occurrences that led up to an election whose outcome was never in doubt, it is that an unrealistic fear of the loss of power was the dominant theme. The tragedy for both the administration and the country was that once the forces of irrationality were set in motion, there was no way to keep them from getting dangerously out of hand.

MARINE CORPS HEAD LINKED TO C.I.A.'S AUTHORIZATION FOR ELLSBERG BURGLARY

CUSHMAN NAMED

Sources Say General Acted Upon Request By Ehrlichman

By SEYMOUR M. HERSH

Special to The New York Times

WASHINGTON, May 6—Gen. Robert E. Cushman Jr., the Marine Corps commandant who in 1971 was Deputy Director of Central Intelligence, authorized the use of Central Intelligence Agency material and research in the burglary of the office of Dr. Daniel Ellsberg's former psychiatrist, sources close to the Watergate case said today. The sources said that the general, who is a member of the Joint Chiefs of Staff, acted at the request of John D. Ehrlichman, President Nixon's chief assistant for domestic affairs, who resigned last week.

General Cushman, who left the C.I.A. in 1971 was questioned by agents of the Federal Bureau of Investigation last week, the sources said, and reportedly accepted responsibility for the delay to permit the C.I.A. to E. Howard Hunt Jr. Gordon Liddy prepare break-in.

General Not Available

The New York Times reported today that Federal prosecutors in the Watergate case have summoned some officials of C.I.A. to discuss that agency's role in the burglary. Cushman apparently was the first to be questioned about the agency's activity.

The general could not be reached for comment. Marine Corps officials said that he was traveling to the Netherlands and would not return to

Washington until later this week.

The prosecuting team, headed by Earl J. Silbert and Seymour Glanzer, first learned of the burglary at the office of Dr. Lewis Fielding last month in an interview with John W. Dean 3d, who resigned last week as counsel to the President. In subsequent grand jury testimony last Wednesday, Hunt told of utilizing C.I.A. disguises, fake identification papers, and even a "safehouse" in the Washington area that were provided by the agency's clandestine services, the so-called "dirty tricks" department.

Krogh Also Named

Hunt, a 20-year C.I.A. veteran who, along with Liddy and five others, was arrested last year in connection with the Watergate bugging, also told the grand jury that he believed that cooperation with the C.I.A. had been arranged by one of his superiors, Egil Krogh Jr.

At the time, according to grand jury testimony, Mr. Krogh was directly in charge of a special White House team that had been set up in the aftermath of the June, 1971, publication of the Pentagon

papers to determine who was involved in the disclosure of the documents.

Mr. Krogh, at the time one of Mr. Ehrlichman's key deputies for domestic affairs, reportedly recruited both Liddy and Hunt over the next few weeks, and the two men immediately began planning the operation to get the psychiatrist's records.

Mr. Krogh, who has reportedly resigned his new job as Under Secretary of Transportation, sent a classified affidavit to the Ellsberg court Friday in which he reportedly accepted full responsibility for the burglary.

Authority in Question

Two sources confirmed today, however, that Mr. Krogh did not have the authority to deal directly with the Central Intelligence Agency on such matters as arranging help for a clandestine operation inside the United States.

One source knowledgeable about the Hunt-Liddy burglary plan gave the following version of how the agency's cooperation was enlisted:

The C.I.A. connection was initiated by Hunt, who had instant telephone communication with that agency and other intelligence offices through a phone that he and Liddy ordered installed in their quarters in the Executive Office Building, next to the White House.

After being told by a C.I.A. official that further authority was needed before the agency could provide any assistance, the source said, Hunt went to Mr. Krogh, who took the problem to his superior, Mr. Ehrlichman.

Then the source went on: "Ehrlichman makes a telephone call to Cushman, and says, 'Hey, these guys need

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Mrs. Neenan _____

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The New York Times 1246
The Daily World _____
The New Leader _____
The Wall Street Journal _____
The National Observer _____
People's World _____

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some chores done. Won't you take care of it?" Cushman says, "O.K., I'll do it."

"There was absolutely nothing in writing," the source said. "There was only one call, just a little lean-on call by Ehrlichman. And then Hunt and Liddy began asking for safehouses and all the rest."

Cooperation Noted

At the time of Mr. Ehrlichman's alleged call, all the key intelligence agencies of the Government were said to be cooperating with the Hunt-Liddy group.

President Nixon was known to have been angered by the disclosure of the Pentagon papers, which were published in part by The New York Times in June, 1971, and by publication by The Times a few months later of details of the strategic arms agreement, then being worked out by the White House and the Soviet Union.

Henry A. Kissinger, the President's assistant for national security affairs, lent David A. Young Jr., one of his assistants on the national security staff, to the Hunt-Liddy group, which some have referred to as "plumbers" trying to stop leaks of information. Mr. Young, who has been unavailable to newsmen, left the Government three weeks ago.

Mr. Ehrlichman, in a statement provided to the F.B.I. and read at the Ellsberg trial, acknowledged learning of the burglary—which failed to produce any of Dr. Ellsberg's psychiatric records—after it took place and warning Mr. Krogh and the others not to do it again.

The complete connection between Hunt's White House operations and the C.I.A. is not

fully determined. One former high-ranking White House adviser said today that Hunt had been recommended for his job with the "plumbers" by Richard Helms, the former director of Central Intelligence, who was named Ambassador to Iran early this year.

Denied Watergate Tie

Attempts to reach Mr. Helms by telephone yesterday and today were unsuccessful. An official at the United States Embassy said today that the Ambassador had retired for the

night and left instructions not to be disturbed.

In his Senate confirmation hearings in February for the post in Iran, Mr. Helms declared that his agency had nothing to do with the bugging and wiretapping of the Democratic National Committee headquarters at the Watergate complex. He said he had "no control" over agency employees who had left.

At least four members of the original Watergate break-in team have said privately that they thought they were participating in a C.I.A. operation at the time they were arrested. The seven-man team was put together by Hunt and Liddy after they were transferred from the White House to the Republican re-election committee in early 1972.

Agency officials refused to comment on the reported link between Mr. Ehrlichman and General Cushman, but one official did confirm a report today in The Washington Post that an agency psychological profile of Dr. Ellsberg had been prepared and provided over protests of some agency officials.

Objection Reported

According to Hunt's grand jury testimony, which was released Friday in Los Angeles, the psychological profile was written by Dr. Bernard Melloy, said to be in charge of the agency's psychological assessment unit. Dr. Melloy subsequently told his superiors that providing such a study for domestic purposes was an error in judgment, The Post said, but that he was ordered to complete the project nonetheless.

It could not be learned whether General Cushman, who served as Deputy Direc-

tor of Central Intelligence for two years, had ordered Dr. Melloy to cooperate with the White House.

One source with close connections to the agency described many senior agency officials as being "angry and depressed" over the new disclosures. "They feel that irreparable damage has been done by this to the C.I.A.," the source said by the senior officials. "They think the whole project was an absolute violation of the C.I.A.'s charter."

The legality of the agency's cooperation with Hunt and Liddy is questionable. The National Security Act of 1947, which set up the agency, expressly bars it from having any "police, subpoena, law-enforcement powers or internal security functions." But the law also authorizes the agency to protect "intelligence sources and methods from unauthorized disclosure"—an authority that seems relevant to what the Government viewed in June, 1971, as the illegal theft and publication of the Pentagon papers, a secret Defense Department study on the history of the Vietnam war.

Marine Commandant

Robert Everton Cushman Jr.

By DAVID E. ROSENBAUM

Special to The New York Times

WASHINGTON, May 6—In early 1957, an ambitious Marine Corps colonel with a record of heroism in World War II left the Pentagon for four years to serve as an aide to a politician downtown. The colonel was Robert Everton Cushman Jr. The politician was Vice President Richard M.

Man
in the
News

Nixon. The Marine officer served Mr. Nixon for the last four years of his Vice - Presidency as his chief

adviser on national security, and the close relationship that developed played no small part in the officer's rising career.

On leaving the White House in 1961, Colonel Cushman was promoted to brigadier general. He served in Vietnam and received two more stars over the next eight years, and when Mr. Nixon became President, he brought his former aide back from Southeast Asia and appointed him Deputy Director of Central Intelligence.

Named in Break-In

Today, General Cushman was named by sources close to the Watergate investigators as the C.I.A. official who authorized the use of the agency's equipment and research in the burglary of the office of Daniel Ellsberg's psychiatrist.

The action was said to have occurred in 1971. The general was to serve in the C.I.A. post only a short time longer. In January, 1972, the President gave him his fourth star and made him Commandant of the Marine Corps.

Over the years, General Cushman has always spoken openly about his relationship with Mr. Nixon. He considers the President a friend and recalls that Mr. Nixon visited him in 1965 when he was stationed at Camp Pendleton in California.

Asked once how he got along with Mr. Nixon during the four years they worked closely together, General Cushman replied, "I think the Vice President liked the way I did my job because he kept me in it for four years."



Camera Press

"A no-nonsense man"

General Cushman also has a good deal of combat experience. He was aboard the Pennsylvania in drydock at Pearl Harbor when the Japanese bombed the ship. About a third of the ship's crew was killed, but he was not injured. Later in the war, he won the bronze star in the invasion of France and the Navy Cross for heroism during the Battle of Guam.

In Vietnam from 1967 to 1969, he was commanding officer of 163,000 soldiers and marines in the northernmost provinces. No other Marine Corps officer has ever commanded so many

battlefront troops at once.

General Cushman was born in St. Paul, Minn., on Christmas Eve, 1914. He went to public schools there and then to the United States Naval Academy, class of 1935, where he played lacrosse and graduated 10th in his class.

Out of uniform, General Cushman, with his heavy-lensed bifocals, looks like a college professor. But in uniform, at 6 feet and 200 pounds, with closely cropped hair, a square jaw, a barrel chest and ramrod posture, he looks like a picturebook marine.

At work, he is described by his colleagues as single-minded—"strictly a no-nonsense man," an officer who has worked with him remarked.

Sherry and Good Music

After work, the general enjoys relaxing with a glass of sherry and good music on the phonograph. He plays some golf and swims and jogs regularly. He also enjoys chess and woodworking.

Last summer, General Cushman and his wife, the former Audrey Boyce of Portsmouth, Va., gave an enormous garden party on the lawn of the Commandant's residence here. Lobster, beef roasted on a spit and assorted meats cooked on hibachis were served.

The Cushmans have two children, Robert Ed and Mrs. Bernard Cauley. Both are grown.

In his years in the Marines, General Cushman has carefully studied military tactics and believes that mobility is the key to success. He argued strenuously in Vietnam against the static defense concepts such as those employed at Khe Sanh, the American Bastion that was besieged by the Communists for many months.

General Cushman was so convinced of the worth of helicopters that, during one of his tours in Vietnam, he learned to fly one himself and used it to hop around his command.

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Mrs. Neenan _____

Dismissal of Ellsberg Trial Over Judge's Acts Sought

By MARTIN ARNOLD

Special to The New York Times

LOS ANGELES, May 6—Defense attorneys in the Pentagon papers trial plan to ask a Federal appeals court to dismiss the case immediately on the ground that the White House tried to compromise the trial judge.

The attorneys said that the final decision on when to go to the higher court will be made by the defendants, Dr. Daniel Ellsberg and Anthony J. Russo Jr. The papers are already drawn up, but the defendants, who have already asked the trial judge for a dismissal, have to decide whether to ask formally also for a mistrial before going to the higher court.

There will be two other grounds for going to the higher court. One is that the case is one of selective political prosecution directed from the White House, rather than a normal criminal one directed by the Attorney General. The other is what the defense calls a "long history" of Government "misbehavior" in the case.

There is, for instance, the belief that the Government knew as far back as 1969 that Dr. Ellsberg had copied the papers but did not choose to arrest him until the eve of the day that the Government's prior restraint case against The New York Times was to be argued in the Supreme Court on June 26, 1971. This was 12 days after The Times first disclosed the Pentagon Papers.

A writ of mandamus against Federal District Judge William Matthew Byrne Jr., who is presiding at the trial, will be filed, possibly with the United States Court of Appeals for the Ninth Circuit, in San Francisco, if it is approved by the defendants and their lawyers. The defense attorneys expect approval.

Vindication Is Sought

Dr. Ellsberg and Mr. Russo are opposed to a mistrial, although they might allow a mo-

tion for one to be filed with Judge Byrne as a legal tactic prior to going to the Court of Appeals.

The two defendants are also personally ambivalent about a dismissal at this stage of the trial because they believe they have answered the charges against them and they want the jury to acquit them as a vindication of their acts. Still, they have moved for a dismissal on a number of occasions, and one such motion is still under consideration by the trial judge.

The new writ of mandamus will be the third one brought in this trial against Judge Byrne. The first one, in July, 1972, led to a four-month hiatus of the case while the issue of wiretapping was threshed out between the Government and the defense.

At that time a jury had already been selected, and so, after the four-month wait, the defense moved for a mistrial to enable a new jury to be impaneled, and the second writ of mandamus was filed against him in San Francisco.

On Dec. 8, the Court of Appeals upheld the judge's ruling but said it would be "foolish" to continue the trial with the first jury. Four days later Judge Byrne did declare a mistrial and a new jury had to be selected. No testimony in the case had been heard by the first jury.

The writ of mandamus drawn up this weekend charges "impropriety" by

Judge Byrne in visiting twice in April with John D. Ehrlichman, then President Nixon's top adviser for domestic affairs, who discussed with him the possibility of the judge's becoming director of the Federal Bureau of Investigation.

In two statements issued from the bench, with the jury out of the room, the judge said that he visited Mr. Ehrlichman in San Clemente on April 5 and Santa Monica on April 7 and that on both occasions he told Mr. Ehrlichman he could not consider another Government position until the trial had ended.

But the writ will assert the judge did not volunteer information, that he disclosed it only after news of the meetings was published in the newspapers, and that even then disclosure came about after defense solicited a statement from him on the encounter. During the first meeting he so met briefly with President Nixon, the judge said.

What Was Said

In neither of his statements did the judge explain why a second meeting with Mr. Ehrlichman was necessary, nor did he disclose precisely what was said at the meetings. The writ says that at the time he saw the judge Mr. Ehrlichman knew his name was shortly thereafter to be involved in the Pentagon papers trial.

On May 1, the judge released an F.B.I. interview of April 27 with Mr. Ehrlichman in which the former White

House aide said that, acting on orders from President Nixon, he had had two of his assistants conduct a secret investigation of the Pentagon papers case. This inquiry led to the break-in at the office of Dr. Ellsberg's psychiatrist in Beverly Hills.

The defense has already moved to dismiss the case on the ground of the judge's involvement with Mr. Ehrlichman. But on Friday Judge Byrne denied that motion saying, "I am convinced beyond any doubt that nothing has compromised my ability to act as a fair and impartial judge in this case."

The "selective political prosecution" charge in the proposed writ stems also from the allegation that E. Howard Hunt Jr., a convicted Watergate conspirator, leaked "top secret" information to the now-defunct "Life" magazine and was not prosecuted for it.

The Washington Post

Times Herald

The Washington Daily News

The Evening Star (Washington)

The Sunday Star (Washington)

Daily News (New York)

Sunday News (New York)

New York Post

The New York Times 144

The Daily World

The New Leader

The Wall Street Journal

The National Observer

People's World

Date 5-7-73

Authority Denied

Hunt has admitted that he and G. Gordon Liddy Jr., another convicted conspirator, led the team that broke into the psychiatrist's office, and that the operation was approved by the White House and aided by the Central Intelligence Agency. The agency, the writ will point out, has no authority to carry out such operations within the continental United States.

One question in the selective prosecution argument is: Why has Hunt not prosecuted for leaking top secret information

to Life and why was Dr. Ellsberg prosecuted for disclosing the Pentagon Papers?

The other question is: Why did the Government wait so long to have Dr. Ellsberg arrested when the F.B.I. knew at Christmas, 1969, that he had copied papers taken from the Rand Corporation and by April, 1970, other Government officials also knew about the copying?

There is the further fact that the first prosecutor in this case, now deceased, refused to sign the indictment against Dr. Ellsberg. It was finally signed on the orders of John N. Mitchell, then Attorney General, by one of Mr. Mitchell's aides.

Two Counts Originally

When Dr. Ellsberg was first arrested he was charged with only two counts, but in December, 1971, he was reindicted and the case was broadened to include conspiracy. He and Mr. Russo are now on trial for six counts of espionage, six counts of theft and one count of conspiracy.

The defense is also contending in its writ that there has been a long history of Government misbehavior in this case, from the suppression of evidence to the White House involvement, to the slowness with which the Government has responded to Judge Byrne's order for an investigation into the link between this trial and the Watergate case. Judge Byrne has already dismissed an espionage count against Dr. Ellsberg because of the suppression of evidence.

Judge Byrne has taken under submission the motion to dismiss on the misbehavior ground. This has led to a highly legalistic argument in the courtroom between the defense attorneys and the judge—an argument that many lawyers believe will be studied by constitutional scholars for years to come.

Briefly put, despite the break-in at the psychiatrist's office and despite the involvement of

the White House, Judge Byrne apparently believes that there is no precedent for dismissing the case simply on the ground of the Government's misbehavior, lawyers say. And he is a judge who insists on following, not setting, precedent.

As he apparently sees it, from his statements in court, there can be a dismissal only if it can be shown that the "fruits" of the misbehavior were used by the Government

either in arriving at the decision to prosecute Dr. Ellsberg or were directly used in either the evidence or the testimony presented by the Government in the courtroom during the 85 trial days so far.

This goes to the matter of "taint," and so far the court-ordered investigation of the Watergate-Pentagon Papers link is directed at discovering whether there was actual "taint."

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 Mr. Baker _____
 Mr. Callahan _____
 Mr. Cleveland _____
 Mr. Conrad _____
 Mr. Gebhardt _____

CIA BURGLARY ROLE PROBED

Cushman OK'd Aid to Hunt

By SEYMOUR M. HERSH

New York Times News Service.

Gen. Robert E. Cushman Jr., the Marine Corps commandant who in 1971 was deputy director of the Central Intelligence Agency, authorized the use of CIA material and research in the burglary of the office of Dr. Daniel Ellsberg's former psychiatrist, sources close to the Watergate case say.

The sources said yesterday that the general, who is now a member of the Joint Chiefs of Staff, acted at the request of John D. Ehrlichman, President Nixon's chief adviser for domestic affairs until he resigned last week.

Cushman, who left the CIA in 1971, was questioned by FBI agents late last week, the sources said, and reportedly accepted full responsibility

for the decision to permit the CIA to help E. Howard Hunt Jr. and G. Gordon Liddy prepare for the break-in.

Cushman could not be reached for comment.

The federal prosecuting team in the Watergate case first learned of the burglary at the office of Dr. Lewis Fielding in an interview last month with John W. Dean III,

who resigned as counsel to the President last week. Then, in grand jury testimony Wednesday, Hunt told of utilizing CIA disguises, fake identification papers, and even a "safe-house" in the Washington area that were provided by the agency's clandestine services, the so-called "dirty tricks" department.

Hunt, a 20-year CIA veteran who, along with Liddy and five others, were arrested last year in connection with the Watergate bugging, also told the grand jury that he believed that cooperation with the CIA had been arranged by one of his superiors, Egil Krogh Jr.

At the time, according to grand jury testimony, Krogh, deputy to Ehrlichman was directly in charge of a special White House team that had been set up in the aftermath of the June 1971 publication of the Pentagon Papers to determine who was involved in the disclosure of the documents.

Krogh, who reportedly has resigned his new job as under secretary of Transportation, sent a classified affidavit to the Ellsberg trial court Friday in which he reportedly accepted full responsibility for the burglary.

Two sources confirmed yesterday, however, that Krogh did not have the authority to deal directly with the CIA on such matters as arranging help for a clandestine operation inside the United States.

One source knowledgeable about the Hunt-Liddy burglary plan gave the following version of how the agency's cooperation was enlisted:

The CIA connection was initiated by Hunt, who had instant telephone communication with that agency and other intelligence offices through a highly secure scrambler telephone that he and Liddy ordered installed in their quarters in the Executive Office Building, next to the White House.

AFTER BEING told by a CIA official that further authority was needed before the agency could provide any as-

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General OKd Hunt Aid

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assistance, the source said, Hunt went to Krogh, who took the problem to his superior, Ehrlichman.

Then the source went on: "Ehrlichman makes a telephone call to Cushman, and says, 'Hey, these guys need some chores done. Won't you take care of it?' Cushman says, 'OK I'll do it.'"

"There was absolutely nothing in writing," the source said. "There was only one call — just a little lean-on call by Ehrlichman. And then Hunt and Liddy began asking for safehouses and all the rest."

At the time of Ehrlichman's alleged call, all the key intelligence agencies of the government were said to be cooperating with the Hunt-Liddy group.

President Nixon was known to have been angered by the disclosure of the Pentagon Papers, which were published in part by The New York Times in June 1971, and by publication by The Times a few months later of details of the strategic arms agreement then being worked out by the White House and the Soviet Union.

Ehrlichman, in a statement provided to the FBI and read at the Ellsberg trial, acknowledged learning of the burglary — which failed to produce any of Ellsberg's psychiatric records — after it took place, and warning Krogh and the others not to do it again.

The complete connection between Hunt's White House operations and the CIA has not been fully determined. One former high-ranking White House adviser said yesterday that Hunt had been recommended for his job with the "plumbers" by Richard Helms, former CIA director, who was named ambassador to Iran early this year.

Attempts to reach Helms by telephone this weekend were unsuccessful.

It was learned, meanwhile, that Hunt was granted immunity April 27 from prosecution for anything he may say to the Senate's Watergate committee. He also was told to answer any subpoena the committee may serve on him in an order, signed by Chief Judge John J. Sirica of U.S. District Court, in response to an application by the committee's attorneys. Hunt and his six co-defendants in the Watergate trial previously

were granted immunity by Sirica to testify before the grand jury hearing new disclosures in the Watergate case.

Agency officials refused to comment on the reported link between Ehrlichman and Cushman, but one official did confirm a report in the Washington Post that an agency psychological profile of Ellsberg had been prepared and provided over protests of some agency officials.

One source with close connections to the agency described many senior agency officials as being "angry and depressed" over the disclosures. "They feel that irreparable damage has been done by this to the CIA," the source said of the senior officials. "They think the whole project was an absolute violation of the CIA's charter."

The legality of the agency's cooperation with Hunt and Liddy is questionable. The National Security Act of 1947, which set up the agency, expressly bars it from having any "police, subpoena, law-enforcement powers or internal security functions." But the law also authorizes the agency to protect "intelligence sources and methods from unauthorized disclosure" — an authority that seems relevant to what the government viewed in June, 1971, as the illegal theft and publication of the Pentagon Papers, a secret Defense Department study on the history of the Vietnam war.

Times Links Marine General To CIA Role in Ellsberg Case

A-10 By Martin Weil
Washington Post Staff Writer

Marine Corps Commandant Gen. Robert E. Cushman Jr., while deputy director of the Central Intelligence Agency in 1971, authorized CIA involvement in the plot to burglarize the office of Daniel Ellsberg's former psychiatrist, the New York Times reported in today's editions.

Attributing its report to sources close to the Watergate case, The Times said Cushman, who left the CIA Jan. 1, 1972, and is now a member of the Joint Chiefs of Staff, authorized the use of CIA material and research in the burglary.

The Times said that the general was questioned last week by the FBI and is reported to have accepted full responsibility for the decision to let the CIA help E. Howard Hunt Jr. and G. Gordon Liddy prepare for the break-in.

Cushman acted at the request of John D. Ehrlichman, who resigned last week as President Nixon's chief domestic affairs assistant, according to the Times report.

Hunt, a convicted Watergate conspirator, has testified before a grand jury here that he and Liddy, also a convicted conspirator, sought to get information from the break-in that would bear on the mental makeup, and "prosecutability" of Ellsberg, who is on trial on charges of espionage and theft in the Pentagon Papers case.

Efforts by The Washington Post to reach Cushman last night were unsuccessful.

A CIA spokesman said that a detailed explanation of any CIA involvement in the burglary plot has been given to the Department of Justice, and declined to comment further on the matter.

In his testimony, Hunt, a CIA veteran, said the CIA provided cameras, disguises, false papers and other "technical assistance" for the burglary operation.

He described meetings with CIA agents in so-called "safe houses" — secret hideaways — in Washington, and said he was given a "sterile," or unlisted, phone number, whose billings are not reflected.

In addition, he said that when the break-in turned up nothing the plotters went to the CIA for a psychiatric profile of Ellsberg, compiled at second hand.

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CUSHMAN NAMED

Sources Say General Acted Upon Request By Ehrlichman

By SEYMOUR M. HERSH

Special to The New York Times

WASHINGTON, May 6—Gen. Robert E. Cushman Jr., the Marine Corps commandant who in 1971 was Deputy Director of Central Intelligence, authorized the use of Central Intelligence Agency material and research in the burglary of the office of Dr. Daniel Ellsberg's former psychiatrist, sources close to the Watergate case said today.

The sources said that the general, who is a member of the Joint Chiefs of Staff, acted at the request of John D. Ehrlichman, President Nixon's chief assistant for domestic affairs, who resigned last week.

Mr. Ehrlichman, in a statement provided to the Federal Bureau of Investigation on April 27 and read at the Ellsberg trial, acknowledged learning of the burglary after it took place and said that he had warned those involved not to do it again. He could not be reached for comment today.

General Not Available

General Cushman, who left the C.I.A. in 1971, was questioned by the F.B.I. late last week, the sources said, and reportedly accepted full responsibility for the decision to permit the agency to help E. Howard Hunt Jr. and G. Gordon Liddy prepare for the break-in.

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The New York Times reported today that Federal prosecutors in the Watergate case had summoned some officials of the C.I.A. to discuss that agency's role in the burglary. General Cushman apparently was among the first to be questioned on the agency's activity.

The general could not be reached for comment today. Marine Corps officials said that he was traveling to the Netherlands and would not return to Washington until later this week.

Krogh Also Named

The prosecuting team, headed by Earl J. Silbert and Seymour Glanzer, first learned of the burglary at the office of Dr. Lewis Fielding last month in an interview with John W. Dean 3d, who resigned last week as counsel to the President. In subsequent grand jury testimony last Wednesday, Hunt told of utilizing C.I.A. disguises, fake identification papers, and even a "safehouse" in the Washington area that were provided by the agency's clandestine services, the so-called "dirty tricks" department.

Hunt, a 20-year C.I.A. veteran who, along with Liddy and five others, was arrested last year in connection with the Watergate bugging, also told the grand jury that he believed that cooperation with the C.I.A. had

been arranged by one of his superiors, Egil Krogh Jr.

At the time, according to grand jury testimony, Mr. Krogh was directly in charge of a special White House team that had been set up in the aftermath of the June, 1971, publication of the Pentagon papers to determine who was involved in the disclosure of the documents.

Authority in Question

Mr. Krogh, at the time one of Mr. Ehrlichman's key deputies for domestic affairs, reportedly recruited both Liddy and Hunt over the next few weeks, and the two men immediately began planning the operation to get the psychiatrist's records.

Mr. Krogh, who has reportedly resigned his new job as Under Secretary of Transportation, sent a classified affidavit to the Ellsberg court Friday in which he reportedly accepted full responsibility for the burglary.

Two sources confirmed today, however, that Mr. Krogh did not have the authority

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deal directly with the Central Intelligence Agency on such matters as arranging help for a clandestine operation inside the United States.

One source knowledgeable about the Hunt-Liddy burglary plan gave the following version of how the agency's cooperation was enlisted:

The C.I.A. connection was initiated by Hunt, who had instant telephone communication with that agency and other intelligence offices through a highly secure scrambler telephone that he and Liddy ordered installed in their quarters in the Executive Office Building, next to the White House.

After being told by a C.I.A. official that further authority was needed before the agency could provide any assistance, the source said, Hunt went to Mr. Krogh, who took the problem to his superior, Mr. Ehrlichman.

Cooperation Noted

Then the source went on:

"Ehrlichman makes a telephone call to Cushman, and says, 'Hey, these guys need some chores done. Won't you take care of it?' Cushman says, 'O.K., I'll do it.'"

"There was absolutely nothing in writing," the source said.

"There was only one call, just

a little lean-on call by Ehrlichman. And then Hunt and Liddy began asking for safehouses and all the rest."

At the time of Mr. Ehrlichman's alleged call, all the key intelligence agencies of the Government were said to be cooperating with the Hunt-Liddy group.

President Nixon was known to have been angered by the disclosure of the Pentagon papers, which were published in part by The New York Times in June, 1971, and by publication by The Times a few months later of details of the strategic arms agreement, then being worked out by the White House and the Soviet Union.

Henry A. Kissinger, the President's assistant for national security affairs, lent David A. Young Jr., one of his assistants on the national security staff, to the Hunt-Liddy group, which some have referred to as "plumbers" trying to stop leaks of information. Mr. Young, who has been unavailable to newsmen, left the Government three weeks ago.

The complete connection between Hunt's White House op-

erations and the C.I.A. is not fully determined. One former high-ranking White House adviser said today that Hunt had been recommended for his job with the "plumbers" by Richard Helms, the former director of Central Intelligence, who was named Ambassador to Iran early this year.

Denied Watergate Tie

Attempts to reach Mr. Helms by telephone yesterday and today were unsuccessful. An official at the United States Embassy said today that the Ambassador had retired for the night and left instructions not to be disturbed.

In his Senate confirmation hearings in February for the post in Iran, Mr. Helms declared that his agency had nothing to do with the bugging and wiretapping of the Democratic National Committee headquarters at the Watergate complex. He said he had "no control" over agency employees who had left.

At least four members of the original Watergate break-in team have said privately that they thought they were participating in a C.I.A. operation at

the ~~time they were arrested~~. The seven-man team was put together by Hunt and Liddy after they were transferred from the White House to the Republican re-election committee in early 1972.

Agency officials refused to comment on the reported link between Mr. Ehrlichman and General Cushman, but one official did confirm a report today in The Washington Post that an agency psychological profile of Dr. Ellsberg had been prepared and provided over protests of some agency officials.

Objection Reported

According to Hunt's grand jury testimony, which was released Friday in Los Angeles, the psychological profile was written by Dr. Bernard Melloy, said to be in charge of the agency's psychological assessment unit. Dr. Melloy subsequently told his superiors that providing such a study for domestic purposes was an error in judgment, The Post said, but that he was ordered to complete the project nonetheless.

It could not be learned whether General Cushman, who served as Deputy Direc-

tor of Central Intelligence for two years, had ordered Dr. Melloy to cooperate with the White House.

One source with close connections to the agency described many senior agency official as being "angry and depressed" over the new disclosures. "They feel that irreparable damage has been done by this to the C.I.A.," the source said of the senior officials. "They think the whole project was an absolute violation of the C.I.A.'s charter."

The legality of the agency's cooperation with Hunt and Liddy is questionable. The National Security Act of 1947, which set up the agency, expressly bars it from having any "police, subpoena, law-enforcement powers or internal security functions." But the law also authorizes the agency to protect "intelligence sources and methods from unauthorized disclosure"—an authority that seems relevant to what the Government viewed in June, 1971, as the illegal theft and publication of the Pentagon papers, a secret Defense Department study on the history of the Vietnam war.

MARINE CORPS HEAD LINKED TO C.I.A.'S AUTHORIZATION FOR ELLSBERG BURGLARY

Ellsberg Judge's Act Cited In Plan to Ask End of Trial

By MARTIN
Special to The

LOS ANGELES, May 6—Defense attorneys in the Pentagon papers trial plan to ask a Federal appeals court to dismiss the case immediately on the ground that the White House tried to compromise the trial judge.

The attorneys said that the final decision on when to go to the higher court will be made by the defendants, Dr. Daniel Ellsberg and Anthony J. Russo Jr. The papers are already drawn up, but the defendants, who have already asked the trial judge for a dismissal, have to decide whether to ask formally also for a mistrial before going to the higher court.

2 Other Grounds

There will be two other grounds for going to the higher court. One is that the case is one of selective political prosecution directed from the White House, rather than a normal criminal one directed by the Attorney General. The other is what the defense calls a "long history" of Government "misbehavior" in the case.

There is, for instance, the belief that the Government knew as far back as 1969 that Dr. Ellsberg had copied the papers but did not choose to arrest him until the eve of the day that the Government's prior restraint case against The New York Times was to be argued in the Supreme Court on June

26, 1971. This was 13 days after The Times first disclosed the Pentagon papers, a secret study of the Vietnam war.

A writ of mandamus against Federal District Judge William Matthew Byrne Jr., who is presiding at the trial, will be filed, possibly with the United States Court of Appeals for the Ninth Circuit, in San Francisco, if it is approved by the defendants and their lawyers. The defense attorneys expect approval.

Vindication Is Sought

Dr. Ellsberg and Mr. Russo are opposed to a mistrial, although they might allow a motion for one to be filed with Judge Byrne as a legal tactic prior to going to the Court of Appeals.

The two defendants are also personally ambivalent about a dismissal at this stage of the trial because they believe they have answered the charges against them and they want the

jury to acquit them as a vindication of their acts. Still, they have moved for a dismissal on a number of occasions, and one such motion is still under consideration by the trial judge.

The new writ of mandamus will be the third one brought in this trial against Judge Byrne. The first one, in July, 1972, led to a four-month hiatus of the case while the issue of wiretapping was threshed out between the Government and the defense.

At that time a jury had already been selected, and so, after the four-month wait, the defense moved for a mistrial to enable a new jury to be impaneled. Judge Byrne denied that motion, and the second writ of mandamus was filed against him in San Francisco.

On Dec. 8, the Court of Appeals upheld the judge's ruling but said it would be "foolish" to continue the trial with the first jury. Four days later Judge Byrne did declare a mistrial and a new jury had to be selected. No testimony in the case had been heard by the first jury.

The writ of mandamus

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Ms. Herwig _____
Mr. Mintz _____
Mrs. Neenan _____

Mr. Conmy ✓
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drawn up this weekend charges "impropriety" by Judge Byrne in visiting twice in April with John D. Ehrlichman, then President Nixon's top adviser for domestic affairs, who discussed with him the possibility of the judge's becoming director of the Federal Bureau of Investigation.

In two statements issued from the bench, with the jury out of the room, the judge said that he visited Mr. Ehrlichman in San Clemente on April 5 and Santa Monica on April 7 and that on both occasions he told Mr. Ehrlichman he could not consider another Government position until the trial had ended.

What Was Said

But the writ will assert that the judge did not volunteer this information, that he disclosed it only after news of the meetings was published in the newspapers, and that even then the disclosure came about after the defense solicited a statement from him on the encounters. During the first meeting he also met briefly with President Nixon, the judge said.

In neither of his statements did the judge explain why a second meeting with Mr. Ehrlichman was necessary, nor did he disclose precisely what was said at the meetings. The writ says that at the time he saw the judge Mr. Ehrlichman knew his name was shortly thereafter to be involved in the Pentagon papers trial.

On May 1, the judge released an F.B.I. interview of

April 27 with Mr. Ehrlichman in which the former White House aide said that, acting on orders from President Nixon, he had had two of his assistants conduct a secret investigation of the Pentagon papers case. This inquiry led to the break-in at the office of Dr. Ellsberg's psychiatrist in Beverly Hills.

The defense has already moved to dismiss the case on the ground of the judge's involvement with Mr. Ehrlichman. But on Friday Judge Byrne denied that motion saying, "I am convinced beyond any doubt that nothing has compromised my ability to act as a fair and impartial judge in this case."

The "selective political prosecution" charge in the proposed writ stems also from the allegation that E. Howard Hunt Jr., a convicted Watergate conspirator, leaked "top secret" information to the now-defunct "Life" magazine and was not prosecuted for it.

Authority Denied

Hunt has admitted that he and G. Gordon Liddy Jr., another convicted conspirator, led the team that broke into the psychiatrist's office, and that the operation was approved by the White House and aided by the Central Intelligence Agency. The agency, the writ will point out, has no authority to carry out such operations within the continental United States.

One question in the selective prosecution argument is: Why

was Hunt not prosecuted for leaking top secret information to Life and why was Dr. Ellsberg prosecuted for disclosing the Pentagon papers?

The other question is: Why did the Government wait so long to have Dr. Ellsberg arrested when the F.B.I. knew at Christmas, 1969, that he had copied papers taken from the Rand Corporation and by April, 1970, other Government officials also knew about the copying?

There is the further fact that the first prosecutor in this case, now deceased, refused to sign the indictment against Dr. Ellsberg. It was finally signed on the orders of John N. Mitchell, then Attorney General, by one of Mr. Mitchell's aides.

Two Counts Originally

When Dr. Ellsberg was first arrested he was charged with only two counts, but in December, 1971, he was reindicted and the case was broadened to include conspiracy. He and Mr. Russo are now on trial for six counts of espionage, six counts of theft and one count of conspiracy.

The defense is also contending in its writ that there has been a long history of Government misbehavior in this case, from the suppression of evidence to the White House involvement, to the slowness with which the Government has responded to Judge Byrne's order for an investigation into the link between this trial and the Watergate case. Judge Byrne has already dismissed an espionage count against Dr.

Ellsberg because of the suppression of evidence.

Judge Byrne has taken under submission the motion to dismiss on the misbehavior ground. This has led to a highly legalistic argument in the courtroom between the defense attorneys and the judge—an argument that many lawyers believe will be studied by constitutional scholars for years to come.

Briefly put, despite the break-in at the psychiatrist's office and despite the involvement of the White House, Judge Byrne apparently believes that there is no precedent for dismissing the case simply on the ground of the Government's misbehavior, lawyers say. And he is a judge who insists on following, not setting, precedent.

As he apparently sees it, from his statements in court, there can be a dismissal only if it can be shown that the "fruits" of the misbehavior were used by the Government either in arriving at the decision to prosecute Dr. Ellsberg or were directly used in either the evidence or the testimony presented by the Government in the courtroom during the 85 trial days so far.

This goes to the matter of "taint," and so far the court-ordered investigation of the Watergate-Pentagon papers link is directed at discovering whether there was actual "taint."

To be sure, this can be a subtle doctrine. For lawyers point out that if it can be shown that information called

from the office of Dr. Ellsberg's doctor was used in even the slightest way—such as, for instance, deciding whether to ask Dr. Ellsberg a single question in his testimony—the case is legally tainted and will be dismissed.

But so far, there is no proof of that, and the Government has said it is prepared to "certify" that, in that sense, the case was not tainted, despite any possible wrongdoing by White House agents.

Judge Byrne, however, has continually warned the Government that once the question of taint is raised, it is the Government's burden to prove that the case was not tainted. However, thus far the defense has not filed a motion for dismissal based on taint.

There are several reasons for this. One is that it would be impossible in this case to prove taint under the judge's apparent definition of taint.

Relevance Unknown

The defense contends, for instance, that there is no way to know whether any of the papers admittedly burned by L. Patrick Gray 3d, former acting director of the F.B.I., had anything to do with the prosecution of this case.

The other is the belief of many legal scholars that without taint a Federal judge still has a wide range of powers to dismiss a case merely for misbehavior on the part of the prosecution.

The problem is, these lawyers say, that there is very little precedent for such dismissals.

That is because, they say, usually when a case is dismissed for the prosecutor's misbehavior, it is the Government that moves for the dismissal. The dismissal is then made automatically and the judge does not write an opinion that becomes a precedent.

Indeed, several times during the last week Judge Byrne has hinted to the Government that perhaps it should move for a dismissal itself. He told the chief prosecutor, David R. Nissen, for instance, "I assume your superiors are evaluating this case."

Policing the Police

Still, without this precise sort of written precedent, there is a doctrine of law that allows a Federal judge to "police the police," and part of it is that if the police are guilty of wrongdoing then, the "wrongdoers [the defendants] should go free."

Lawyers point, for instance, to a 1958 Court of Appeals ruling in this circuit. It was the case of the United States v. Heath in which a Federal district judge did dismiss the case and the Government appealed the dismissal.

The Court of Appeals upheld the judge, saying, "The dismissal was, under the circumstances, within the inherent power of the district court. It is established principle that all the authority of the courts to do justice is not encompassed either by rules or by statutes."

The defense in its writ of mandamus will rely heavily on that ruling.

Ellsberg to Seek Review Of FBI Offer to Byrne

LOS ANGELES, May 6 (AP). —Defense attorneys in the Pentagon papers trial said today that they will go to a federal appeals court to ask that the charges against Daniel Ellsberg and Anthony J. Russo Jr. be dismissed immediately on grounds that the White House tried to compromise the judge.

The attorneys said they were working on a petition to be filed with the Ninth U.S. Circuit Court of Appeals. They said they would ask that U.S. District Court Judge W. Matt Byrne Jr. be ordered to dismiss charges of espionage, conspiracy and theft against Ellsberg and Russo.

The lawyers had said they would file the writ Monday, but a spokesman for the defense team said later that more time may be needed to prepare the document.

The appeal to the higher court comes after Byrne refused on Friday to dismiss the case. The dismissal motion was based on the defense's contention that Byrne had been prejudiced during the trial by a White House offer to consider Byrne for the post of director of the Federal Bureau of Investigation.

Byrne is still considering the possibility of dismissing the case because of a link between the Watergate incident in Washington and a burglary at the office of Ellsberg's psychiatrist. He has taken a motion to that effect under consideration and said he would not make that decision until he has received all facts in his probe of the matter.

He is seeking to find out whether the Justice Department used "tainted evidence" illegally obtained through the burglary.

The attorneys said today that they will contend in their appeal that the judge was

"compromised" by two meetings with former presidential adviser John D. Ehrlichman last month.

Byrne has announced in court all details of the meetings, attempting to set the record straight. He said that at Ehrlichman's request he visited the Western White House on April 5 and was approached about becoming FBI director. Byrne said he refused to consider the position while the Pentagon papers trial was going on. He said he had no discussion about the trial with Ehrlichman or with President Nixon, whom he met briefly.

Later, Byrne revealed that he was contacted again by Ehrlichman and met again with the presidential adviser on April 7 at an unspecified location in Santa Monica. He said that he continued to refuse to discuss the possibilities of his taking over the FBI job and said there was no talk about the Pentagon papers trial.

Defense attorneys argued that although Byrne assured them there was no discussion of the trial, it was still improper for him to have had contact with White House officials during a case involving charges of violation of government rules.

Meanwhile, in New Haven, Conn., Sen. Sam J. Ervin Jr. (D-N.C.) said his investigating committee probably would not look into the break-in at the office of Ellsberg's psychiatrist.

The senator said that incident falls outside the committee's realm because it "does not seem to be related to the campaign." Ervin made the comment during a news conference here.

Ervin, here to receive an award from an organization at Yale University, would not say whether President Nixon might be asked to testify before the Senate committee investigating election misconduct related to bugging of Democratic headquarters, but he noted, "I know of no law which would prevent him from appearing."

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Ex-Aide to Nixon Submits Affidavit in Ellsberg Case

By MARTIN ARNOLD
Special to The New York Times

LOS ANGELES, May 5—Egil Krogh Jr., a former White House aide, has sent directly to the judge in the Pentagon papers trial an affidavit in which he reportedly discusses the break-in at the office of Daniel Ellsberg's former psychiatrist.

The affidavit arrived in the office of United States District Judge William Matthew Byrne Jr. last night, and today defense attorneys asked that it be turned over to them Monday morning.

In Washington, the Associated Press reported that Mr. Krogh admitted in the affidavit that he had supervised from the White House the operation that led to the break-in on the evening of Sept. 3, 1971.

Mr. Krogh, who had been a White House aide in the first Nixon Administration, took a leave of absence last week from his current job as Under Secretary of Transportation.

There were the following other developments in the Pentagon papers case today:

Quoting President Nixon's last orders on executive privilege, Leonard B. Boudin, a defense attorney, said that he would move again Monday for immediate dismissal of this case—this time on the ground that it will now be impossible to get at the truth of the link between the Watergate scandal and the Pentagon papers trial.

John W. Dean 3d, the President's former counsel, turned over to the Federal Bureau of Investigation a list of the effects taken from the White House office of E. Howard Hunt Jr., one of those guilty in the Watergate trial. Among other things, the material included a .25-caliber Colt revolver, several files marked "Pentagon Papers" and Ellsberg" and electronic equipment, according to the list, given to the F.B.I. on July 3, 1972. Judge Byrne gave it to the defendants and they made it public today.

Ever since the Watergate case was linked to the Pentagon papers trial, the defense has been asking for a dismissal of the case against Dr. Ellsberg and his co-defendant, Anthony J. Russo Jr. Judge Byrne has been holding off his decision until an investigation can be completed. Former Nixon Administration officials may be

called here to testify, the judge has said.

But Mr. Boudin now contends that in view of the President's latest orders, such an investigation and hearing will be impossible.

'New Dimension' Noted

"The propriety of executive privilege to obstruct Congress—subject of vigorous criticism in the last months," Mr. Boudin said. "It takes on a new and more ominous dimension when President Nixon interferes with the judicial process—as he did yesterday during the still pending motion to dismiss this case."

"The President's decision that ever former Presidential aides will not testify with respect to communications with him means that Mr. [John D.] Ehrlichman and Mr. [Robert] Mardian and possibly Mr. [Robert] Mardian cannot tell the court the extent of the President's involvement in the prosecution."

Nor, he said, can they tell of the President's "knowledge of the alleged activities, such as an examination of a psychiatrist's confidential records."

"The President has taken the equivalent of the Fifth Amendment privilege against self-incrimination," Mr. Boudin said.

Mr. Mardian is a former Assistant Attorney General.

Mr. Boudin said, "It is inconceivable that President Nixon did not know of Mr. Ehrlichman's involvement in this case when he gave his television speech on Monday night in which he expressed great confidence in Mr. Ehrlichman. It is inconceivable that he did not know that Mr. Ehrlichman had on Friday talked to the F.B.I. about this case."

Dr. Ellsberg said the President has now extended that executive privilege to "include the taking himself of the Fifth Amendment for his former aides."

Mr. Boudin said that because the President was using executive privilege to "silence witnesses like Ehrlichman and Krogh," there was no way to continue this trial.

Under executive privilege, the confidentiality of communications within in the executive branch is protected if disclosure would impair the orderly functioning of government.

Mr. Boudin also said that there was no way to continue this case when no one knew what was in the files that there

were burned by L. Patrick Gray 3d, the former acting director of the F.B.I.

Judge Byrne has indicated that he will not dismiss this case unless it is shown that the evidence and testimony presented in court were "tainted." Mr. Boudin said that "with the destruction of evidence we may never know" whether the case was tainted, and "there can now be no hearing, everyone agrees, which would show taint."

The list of effects found in Hunt's office was given to the F.B.I. by Mr. Dean and his assistant, Fred Fielding. The effects included:

The Colt revolver, one clip for the revolver, one holster, three shoulder harnesses, three belt harnesses, four rechargeable Bell and Howell batteries, one tear gas canister, two microphones in simulated Chap-Stick containers. Three antenna leads, four antennas, six jack wires, one shoulder harness with white lead wire and phone jack, three operating instructions for a Bell and Howell portable transmitter.

There was also one copy of the book, "The Pentagon Papers"; six brown envelopes containing classified material relating to the Pentagon papers; one tan folder marked "Ellsberg"; one tan folder marked "Pentagon Papers"; one folder marked "John Paul Vann"; folders marked "Time and Pay Records," which contained verification of hours worked at the White House, and a folder marked "Press Contacts."

Maps Also Found

There were also several maps. One of them, of Delaware, Maryland, Virginia and West Virginia, had a pencil circle around the Warrenton, Va., area and another around the Union Station area.

A second map was of the Baltimore-Washington area, with circles around the junction of Interstate Highways 695 and 195 and in the area of George Washington Memorial Parkway and Interstate 195. There was also a circle around 14th and N Streets, in Washington, with a pencil route traced from the House of Representatives Office Building to that location.

Hunt has admitted that he and G. Gordon Liddy conducted the break-in operation at the psychiatrist's office in Los Angeles.

Dr. Ellsberg and Mr. Russo are charged with six counts of espionage, six counts of theft and one count of conspiracy.

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Mr. Baker _____
Mr. Callahan _____
Mr. Cleveland _____
Mr. Conrad _____
Mr. Gebhardt _____
Mr. Jenkins _____
Mr. Marshall _____
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Justice Had Hunt's Ellsberg File in July

By George Lardner Jr.
Washington Post Staff Writer

For 10 months, the Justice Department had in its possession a file from the White House on Daniel Ellsberg, compiled by Watergate conspirator E. Howard Hunt.

It contained three copies of a 28-page chronology of Ellsberg's life, including notations of private phone calls and visits he had made to two psychiatrists.

On Friday this file was finally turned over to the federal judge in Los Angeles who is presiding at Ellsberg's trial on charges of stealing the Pentagon Papers. It may have a material bearing on the outcome of the trial because it is now known that Hunt and his partner in the Watergate case, G. Gordon Liddy, directed the break-in at the office of Ellsberg's psychiatrist in California in 1971 to obtain his medical records.

It is also known now that the secret investigation of Ellsberg by Hunt and Liddy was ordered by White House employees working under then Presidential assistant John D. Ehrlichman.

It is also known that with Hunt's "Ellsberg" file already in hand, the FBI interviewed Ehrlichman last July 21 about "the activities of Hunt and Liddy while they were under his (Ehrlichman's) employment at the White House."

Yet it was not until two weeks ago that Ehrlichman's familiarity with Hunt and Liddy's "in-depth investigation" of Ellsberg was disclosed.

The failure of the Justice Department to divulge to the court before now the contents of the Ellsberg file and its failure to notify those involved in the trial of the White House investigation of Ellsberg is unexplained.

Two of the principal Justice Department figures in the Watergate investigation have no recollection of why those disclosures were not made.

The FBI refuses comment. So does Earl J. Silbert, the chief assistant U.S. attorney here, who had physical custody of the Ellsberg file last summer.

"We were investigating the Watergate," Silbert said. "I didn't know anything more about the Ellsberg case than any other citizen."

Silbert also declined to discuss last July's FBI interview of Ehrlichman, which was undertaken at Silbert's request.

The chronology is this: FBI agents first contacted the White House to inquire about Hunt's work there on June 17, 1972, hours after the break-in at Democratic National Committee's headquarters in the Watergate office building.

Ten days later, on June 27, according to memoranda submitted for the record at former FBI chief L. Patrick Gray's ill-fated Senate confirmation hearings, then White House Counsel John W. Dean and his aide, Fred Fielding, handed FBI agents two cardboard boxes full of Hunt's effects from his of-



E. HOWARD HUNT
... compiled dossier

ice at the Executive Office Building.

An inventory of the paraphernalia and documents, which had been temporarily stored in Dean's White House office after the Watergate arrests, was set down in a pair of memos dated last July 3.

The list included a .23 cal. automatic, with a clip of ammunition; microphones, antenna leads, earphones and other electronic equipment, and various documents such as "one brown envelope marked 'Howard Hunt, Eyes Only, Personal, Unclassified'; six brown envelopes with classified material relating to the Pentagon Papers, and "one tan folder marked 'Ellsberg' containing numerous papers concerning one Daniel Ellsberg."

On June 28, The Washington Post reported last week, acting FBI Director Gray was given more documents from Hunt's Executive Office Building safe during a White House meeting with Ehrlichman and Dean. Dean is said to have warned Gray that the two folders, which included fabricated State Department cables about the late President John F.

Kennedy and a Chappaquiddick dossier on Sen. Edward M. Kennedy (D-Mass.), should "never see the light of day."

Gray, sources said, kept the documents in his apartment closet for several days and then destroyed them on July 3.

The acting FBI director, who resigned under fire last week, made no mention at his confirmation hearings of a joint meeting with Ehrlichman and Dean. Gray submitted a purportedly exhaustive list of his contacts with the two White House aides for the Senate record, but for June 28, he noted meeting only with Ehrlichman at 6:30 p.m. that day to discuss "safeguarding investigative procedures against leaks."

That preoccupation was also reflected in Gray's other contacts with the two men. Three of his five communications with Ehrlichman during the Watergate investigation last year and 13 of his contacts with Dean dealt with leaks of information and precautions to plug them.

It was not until last July 17 that steps were taken to interview Ehrlichman about substantive matters.

On that date, Gray later reported in a memo for the Senate record, Assistant U.S. Attorney Silbert, the chief prosecutor in the Watergate case, asked the Washington, D.C., FBI office to talk with Ehrlichman.

Silbert, the memo stated, wanted the FBI "to interview Mr. Ehrlichman regarding the activities of Hunt and Liddy while they were under his employment at the White House and to obtain any documents pertaining to travel and expense accounts at the White House of Hunt and Liddy."

It took three days to get the clearance. The Washington FBI office teletyped

Gray for "authority for this interview." Gray told Assistant FBI Director Charles Bates, whose general investigative division was supervising the Watergate probe, to check with Assistant Attorney General Henry E. Petersen. Bates did, assuring Petersen that the interview "would be directed at specific matters," and Petersen gave his approval.

Apprised of that on July 20, Gray said he gave the go-ahead. Ehrlichman was finally "interviewed on July 21 in Mr. Dean's presence."

The scope and results of that questioning have not been made public. By prosecutor Silbert's account, however, it was not until 2½ weeks ago that he heard of the burglary at the Beverly Hills office of Ellsberg's psychiatrist.

In an April 16 memo made public over government protests at Ellsberg's Pentagon Papers trial last week, Silbert told Assistant Attorney General Petersen that on Sunday, April 15, 1973, "I received information that at a date unspecified, Gordon Liddy and Howard Hunt burglarized the offices of a psychiatrist of Daniel Ellsberg to obtain the psychiatrist's files relating to Ellsberg."

The burglary, it has since turned out, was reported Sept. 4, 1971, to the Beverly Hills, Calif., police, and had apparently taken place the night before. Hunt, a \$100-a-day White House consultant at the time, and Liddy, a full time employee, were both reported by The Washington Star-News to have returned East on a Sept. 4 flight under assumed names.

In addition, Hunt billed the White House for a consultant's fee on Sept. 3, the day of the break-in.

According to the government account now unfolding, however, it was not until Friday of last week, April

27, in a fresh FBI interview, that Ehrlichman acknowledged undertaking a secret White House investigation of the Pentagon Papers leak at President Nixon's explicit direction—an inquiry, Ehrlichman told the FBI, that led to the hiring of Hunt and Liddy and, in turn, to their West Coast break-in. Ehrlichman told the FBI that "when he learned about the burglary, he instructed them 'not to do this again.'"

Government prosecutors at the Ellsberg trial, meanwhile, have been under court order since April, 1972, to disclose any material from government files which might exculpate—or tend to establish the innocence of—Ellsberg or co-defendant Anthony J. Russo.

This chronology is incomplete. It does not explain why—given the strong interest of the government in the Ellsberg case—the separate investigation of Ellsberg by the White House was not fully explored by Justice. It does not explain why Ehrlichman's account of the West Coast break-in was not obtained until nearly 10 months after Hunt's interest—and the White House interest—in Ellsberg were known to both Justice and the FBI. It does not explain why, at the minimum, the Hunt file on Ellsberg was not turned over to Ellsberg's prosecutors or to the court months ago.

One of the officials involved in the Watergate investigation last summer had a theory. The Hunt-Ellsberg connection, he said, probably was simply overlooked in the press of other events; probably it got lost in the Justice Department maze.

The Ellsberg trial judge, W. Matt Byrne Jr., said this week that he would seek his own answers. The Justice Department, he said, would be forced to prove that its case was not tainted.

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Knowledge of Plot Shown Twice, Ex-Aide Is Quoted

HUNT

LOS ANGELES (AP) — Former presidential consultant E. Howard Hunt allegedly kept weapons, camouflaged microphones and information about Daniel Ellsberg and the Pentagon papers case in his office adjacent to the White House, a photocopy of a report under an FBI letterhead indicated yesterday.

The photocopy report was made public by the Ellsberg and Anthony Russo defense team. The attorneys said it was an exact reproduction of the inventory list that U.S. District Court Judge Matt Byrne had turned over to them late Friday.

The FBI photocopied report stated that John Dean, then legal counsel to President Nixon, had provided two FBI agents with a cardboard box whose contents Dean reported he had removed from Hunt's office in the Executive Office Building.

THE FBI photocopied report dated last July 3 stated that the cardboard box had been turned over to the two agents who examined it and made the inventory of its contents in late June.

Hunt was convicted of conspiracy, burglary and wiretapping in connection with the June 17, 1972, break-in and attempted bugging of the Watergate Democratic headquarters and has admitted participation in a burglary of Ellsberg's psychiatrist's office in September 1971.

Among the articles listed as from Hunt's office were a .25-caliber pistol and ammunition, a tear gas cannister, two microphones in "simulated Chapstick containers" instructions for portable radio transmitters and various antennas and antenna wire.

Also, the safe contained six brown envelopes of

See HUNT Page A-4

WATERGATE

By JAMES DOYLE

Star-News Staff Writer

Former White House counsel John W. Dean III is ready to testify that he has knowledge that President Nixon was involved with the effort to cover up the Watergate scandal, Newsweek magazine reported yesterday.

The magazine said Dean has told investigators that on two occasions the President gave indications that he knew of the coverup effort and approved.

In the first such incident, Dean is reported to have said, he was called into the Oval office shortly after the seven convicted Watergate defendants were indicted last September.

THERE, Dean is said to allege, he found Nixon and H. R. (Bob) Haldeman "all grins" because no one higher in the administration had been indicted.

Dean is said to have quoted the President as saying to him, "Good job, John. Bob told me what a great job you've been doing." This was said to refer to Den's effort, under directions, to see that the Watergate investigation succeeded in "keeping the lid on."

The second incident came in December, Newsweek said. A lawyer for convicted Watergate conspirator E. Howard Hunt interceded with the White House to assure that his client would not get a long prison sentence, the story said.

The request was passed from aide Charles Colson to Dean and John Ehrlichman, according to Newsweek.

DEAN reportedly testified that Ehrlichman told him, "I'll check," and then walked into the Oval Office where the President was. He returned, the magazine quotes Dean, with what he said was a promise of executive clemency for Hunt.

Ehrlichman is then said to have told Colson "everything is okay," but that he should not be "too specific" in spelling out what that meant when he reported back to Hunt's lawyer.

The magazine reported that
See WATERGATE Page A-4

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Files on Ellsberg, Weapons Reported

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"classified material relating to the 'Pentagon papers,'" a folder "marked Ellsberg containing numerous papers concerning one Daniel Ellsberg," a folder marked "Pentagon papers" and a published version of the papers.

IN TRANSCRIPTS made public Friday of Hunt's testimony before a grand jury in Washington it was noted that the White House had been gathering information on Ellsberg's personal background in order to determine his "prosecutability."

Some of the materials — the folder of papers on Ellsberg, a folder of time and pay records, and a folder marked "Press Contacts," among them — have been given to the defense by Judge Byrne. The judge is reviewing the envelopes of classified Pentagon papers materials to determine if they would be helpful to defense attorneys.

Byrne said in court Friday that the electronic equipment appeared to have "interception capability" — meaning they could be used for bugging. However, the prosecutor, Asst. U.S. Atty. David Nissen, said later he had determined that the equipment was for communication only, not bugging. But a defense spokesman said the camouflaged microphones, along with harnesses for climbing telephone poles and several "jack wires" mentioned in the list, were apparently to be used in the monitoring of telephone calls.

THE SPOKESMAN said the defense had not immediately been able to figure out the significance of two maps listed in the inventory. The maps showed areas of Baltimore and Washington marked with circles drawn around several highway intersections.

Attorneys for Ellsberg say the allegations of improper snooping by White House aides into Ellsberg's activities confirm their original contention that their clients were prosecuted for political, not legal, reasons.

Attorney Leonard Boudin argued last week that the conspiracy, theft and espionage indictments should be dropped. He called it "the most important political trial of the period."

His colleague, Charles Nesson, reopened an argument raised early in the trial — that the defendants were selectively prosecuted for their revelation of documents embarrassing to the government.

Judge Byrne said he would consider that argument during the weekend.

NEW INFORMATION about White House discussion in 1971 of whether Ellsberg should be prosecuted "established that there was an improper basis for selection of the defendant for prosecution," Nesson said.

The decision to proceed against Ellsberg, he said, was motivated "not on a fair assessment of law" but rather on a political analysis of Ellsberg's acts.

On Friday, Byrne firmly denied the motion for dismissal based on the contention that his fairness was called into question because he had been offered a government position during the trial.

But the judge was unable to make an immediate decision on how to resolve the issue of asserted government misconduct.

"THOUGH there may be misconduct, there is not authority in court to dismiss the indictments," Byrne said.

Watergate: Tie-In Reported

Continued From Page A-1

a high administration official denied that either incident had happened.

DEAN IS known to be negotiating for immunity from prosecution on the basis of his ability to implicate higher White House officials in the alleged Watergate coverup conspiracy.

On Friday he turned over to Federal Judge John Sirica two keys to an Alexandria bank deposit box which he said contains classified documents relating to the Watergate case. Dean said he spirited the documents out of his White House files to prevent their destruction or removal.

The *Newsweek* story had been rumored for several days. An earlier report, in the *New York Daily News* yesterday, said that Dean had "hinted" at the President's involvement during a lengthy interview with Sen. Lowell P. Weicker Jr. Thursday night. Weicker has denied the report.

THE REPORTS come after another week of sensational developments in the case which have brought the Watergate scandal home permanently to the Nixon White House, and increased the likelihood that a special prosecutor will be brought into the case to supervise the Justice Department investigation.

Atty. Gen.-designate Elliot L. Richardson promised his colleagues in the Cabinet on Tuesday that he will pursue the case fully and fairly to its conclusion, wherever it might lead.

He is said to have turned to Nixon and said, "I know that is what you want to do, Mr. President."

Since that meeting Tuesday, more evidence has come to light that espionage, burglary and bugging operations were run out of the White House, and the questions asked with increasing frequency were how much more is yet to be revealed, and how high does the involvement in the crimes go?

E. HOWARD Hunt, the former Central Intelligence Agency agent who was convicted for burglary and bugging of the Watergate, told a grand jury here on Wednesday that his team operated out of the White House under the direction of then White House aide Egil Krogh, and that the group was referred to as "Room 16," the designation of their location within the White House.

And Krogh, a former chief assistant to fired presidential aide John Ehrlichman, is said to have admitted helping supervise the burglary of a Los Angeles psychiatrist's office which linked the Pentagon Papers trial with the Watergate affair.

Krogh, currently on leave as No. 2 man at the Transportation Department, reportedly exonerated both Ehrlichman and President Nixon from any prior knowledge of the Daniel Ellsberg case burglary.

But in his testimony, Hunt told the grand jury that he had been given "a sterile number at the Central Intelligence Agency to call when a material requirement needed to be met."

A STERILE number, Hunt explained is an unlisted telephone number controlled by the CIA, where the billing in telephone company records will not reflect its true assignment.

Hunt also testified that he visited two CIA "safehouses" — anonymous dwellings used by the agency as contact points and to carry on clandestine meetings — in the Washington area to pick up false identity papers and dis-

on the use of a special camera subsequently used to make photographs during the burglary of the psychiatrist's office.

The involvement of the CIA in the Watergate case was the latest clue to the scope of the conspiracy, and it left unanswered whether high White House involvement, — higher than the level of Egil Krogh, — was required to enlist the agency in aiding the operatives of "Room 16."

The New York Times reported today that CIA officials had been summoned to discuss the agency's role in the Ellsberg break-in. The CIA referred all questions on the subject to the Justice Department.

Agency officials reportedly were taking the position that they were not informed on what use Hunt was making of his CIA logistical support.

THIS RAISES the question of who in the Nixon administration had the power to get CIA support for an operation with no questions asked.

On Tuesday, less than a day after President Nixon accepted with praise the resignations of two of his highest aides, H. R. (Bob) Haldeman and John Ehrlichman, the federal judge in the Ellsberg case released an FBI report in which Ehrlichman was quoted as saying he had set up a group after Nixon has "asked him to make inquiries independent of concurrent FBI investigations which had been made relating to the leak of the Pentagon Papers."

This group, under Krogh, became the "room 16" group, according to Hunt. Inside the White House the group was known as "the plumbers." It

who subsequently became counsel to the Committee to Re-elect the President, and was convicted in the Watergate burglary.

In related Watergate case developments:

- Senate Democratic Leader Mike Mansfield said he hopes the Watergate case will lead to a new federal campaign finance law that would restrict the amounts collected and dispersed.

- Sen. Charles Percy, R-Ill., said in an interview with the Associated Press that if Nixon's re-election effort had been left up to the "OP National Committee, the Watergate affair never would have taken place and possibly more Republicans would have won other offices.

Many of the disclosures concerning the financing of the Watergate case and other sabotage activities, and the payment of defendants, has stemmed from information required under a campaign reform act passed last year.

A SENATE Commerce subcommittee has been holding hearings on new legislation to set dollar limits on the amount that political parties can spend in a presidential campaign.

This approach is opposed in general by most Republican leaders.

As the revelations in the Watergate case have grown, the pressure for White House action has become intense, and Nixon finally fired Haldeman and Ehrlichman last Monday because of that pressure.

But he told his cabinet the next day that he was absolutely convinced the two men would be proven innocent.



—Associated Press

Former presidential aide John D. Ehrlichman plays with the family dog, "Kelly," in the yard of his home near Great Falls yesterday.

ment heads not to prejudge the men.

On Friday both men testified separately for several

hours before the Senate Watergate committee behind closed doors amid indications that the Senate investigators

were talking an interest in a possible criminal coverup as well as in the campaign activity.

C.I.A. OFFICIALS SUMMONED TO EXPLAIN AGENCY'S ROLE IN ELLSBERG BREAK-IN PLOT

PROSECUTORS ACT

Issue Call After Hunt Testifies He Utilized Agency Equipment

By SEYMOUR M. HERSH

Special to The New York Times

WASHINGTON, May 5—The Federal prosecutors in the Watergate case have summoned officials of the Central Intelligence Agency to discuss that agency's role in the plot to break into the office of Dr. Daniel Ellsberg's psychiatrist, sources close to the case said today.

The prosecutors asked the intelligence officials to appear, the sources said, after E. Howard Hunt Jr. told a Federal grand jury that he had utilized C.I.A. equipment, including a "safehouse" in Washington used by the agency's clandestine service, to prepare for the burglary of the Los Angeles office of Dr. Lewis Fielding.

'No Advance Notice'

One Federal source described the agency's participation in the domestic operation as "against the law." The names of the officials who will appear were not known. The agency's director at the time, Richard Helms, is now Ambassador to Iran.

Lawrence Houston, general counsel of the C.I.A., said this afternoon, "We supplied all the information on our involvement in this to the Department of Justice some time back."

Mr. Houston repeated what other spokesmen said, "We had no prior knowledge of the Watergate or the break-in to the Ellsberg psychiatrist's office."

But he declined to comment on how the C.I.A. aid on the Los Angeles burglary had been requested, or at what level of the agency command it had been granted.

Wide-Ranging Statute

The possible involvement of the C.I.A. in any criminal aspects of the break-in of the Los Angeles psychiatrist's office poses what some lawyers here depicted as a rare legal situation.

Under the National Security Act of 1947, which set up the agency, the agency is expressly barred from having any "police, subpoena, law-enforcement powers or internal security functions."

The 1947 act also authorizes the agency to protect "intelli-

gence sources and methods from unauthorized disclosure"—an authority that seems relevant to what the Government viewed in June, 1971, as the illegal theft and publication of the Pentagon papers.

Yet one former C.I.A. lawyer said today that the protection authority was a "pretty broad-ranging statute that I don't think has ever really been interpreted by the courts."

"Personnel have sued the agency," he said. "But a grand jury investigation against agency employees—whew!—that's something."

The break-in, which took place in the fall of 1971, three months after publication of the Pentagon papers, was planned by members of the "plumber" team, set up under orders of President Nixon in an attempt to determine who was responsible for aiding Dr. Ellsberg.

Earlier this week, the Federal judge in the Ellsberg case released an F.B.I. report in which John D. Ehrlichman, President Nixon's former chief domestic

adviser, was quoted as saying that he had set up the group after Mr. Nixon had "asked him to make inquiries independent of concurrent F.B.I. investigations which had been made relating to the leak of the Pentagon papers."

Mr. Ehrlichman assigned control of that task to Egil Krogh Jr., one of his chief aides and David Young, a member of the National Security staff who was lent to the project by Henry A. Kissinger, the President's assistant for national security affairs.

Hunt, who retired in 1970 after 20 years in the C.I.A., and G. Gordon Liddy, a former F.B.I. investigator, were recruited by Mr. Krogh in mid-summer of 1971.

Mr. Krogh was reported to have admitted full responsibility for the burglary in an affidavit sent yesterday to the Ellsberg court in Los Angeles. He specifically acknowledged in the document that he had general supervisory responsibility for the break-in.

In a brief conversation earlier this week, Mr. Krogh said that he and his colleagues on the

"plumbers" team had been provided highly classified information indicating that Dr. Ellsberg was planning to leak more Pentagon files to an "enemy embassy." He did not amplify on the remark, and other sources connected with the operation described his statement as untrue.

"This was a typically Liddy-Hunt operation," another source close to the case said. "Lots of risks and no benefits."

Hunt told the grand jury that the raid on the psychiatrist's office had turned up no valuable information.

Mr. Young resigned from his job three weeks ago.

Another member of the "plumbers" operation said in an interview today that Liddy and Hunt had authorized the installation of a scrambler telephone, ordinarily used in intelligence to protect classified information in the event of wire-tapping, shortly after joining the operation. Hunt used the red scrambler telephone, this source said, for calling the C.I.A. and other intelligence agencies.

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CIA Doctor Overruled On Ellsberg

By Thomas O Toole
Washington Post Staff Writer

The White House ordered the Central Intelligence Agency to provide it with a psychiatric profile of Daniel Ellsberg over the objections of the chief of the CIA's psychiatric division, according to informed services.

These sources said White House aides Egil Krogh and David Young told the CIA to construct for them a behavior profile of Ellsberg, even though the CIA's Dr. Bernard Melloy told his superiors such a task was an error in judgment. Melloy was ordered by his superiors to put the profile together and provide it to Krogh and Young.

"Melloy did not want to do it," one source insisted. "His orders to do it came from inside the Central Intelligence Agency and outside the Central Intelligence Agency, namely the White House."

Before the White House ordered up Ellsberg's profile from the CIA, convicted Watergate conspirator E. Howard Hunt had been provided with cameras, "safe," houses, unlisted telephones, disguises and even burglary equipment by the CIA.

Hunt had been a CIA agent from 1949 to 1970, but a reliable source said the CIA helped Hunt because he was working for the White House and not because he was a former agent who was known to many CIA employees.

"With the exception of one or two people, nobody Hunt dealt with at the CIA knew him from his CIA days," the source said. "The people who were dealing

with Hunt's requests presumed he was making an unusual but legitimate request in the name of the White House."

Hunt testified before a federal grand jury last week that the CIA gave him, among other things, an experimental camera that could be concealed in a tobacco pouch.

Hunt told the grand jury that he used the camera to secretly photograph the offices of Beverly Hills psychiatrist Lewis Fielding, which Hunt and others burglarized in August, 1971, with CIA-provided tools in a search for Fielding's files on Ellsberg.

"The agency never knew how Hunt was using the camera and other equipment," one source said. "The agency people who provided Hunt with this equipment never asked him what he was planning to do with it."

The same source said the CIA finally refused Hunt's requests when they grew too demanding. The source said that Hunt began by asking for the camera, then disguises, then unlisted phones, then burglary equipment and then "safe" houses for equipment transfers and other operations.

"It was one thing to provide Hunt with a camera," the source said, "and another to give him safe houses. The CIA finally turned him off."

When Hunt's break-in at the offices of Ellsberg's psychiatrist failed to produce any files on Ellsberg, Hunt recommended to his White House superiors that they approach the CIA directly for a psychiatric profile on Ellsberg.

The CIA did not have any such profile on Ellsberg, but Hunt knew the CIA had a psychiatric division that did behavioral profiles on world leaders. The most celebrated of these profiles was the one it did of Nikita S. Khrushchev in 1961, just before the

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late President Kennedy met with the former Soviet leader in Vienna for summit talks.

Sources said that Hunt never directly approached the CIA about an Ellsberg profile. What Hunt did, sources said, was provide scraps of information about Ellsberg to his White House superiors, who then turned them over to the CIA for the construction of Ellsberg's profile.

Hunt's White House superiors were identified as Egil Krogh and David Young. At the time, Krogh was a deputy to domestic adviser John D. Ehrlichman and Young was on the staff of the National Security Council. Krogh is on leave of absence from his current job as under secretary of transportation, Young has resigned.

The request for Ellsberg's behavioral profile went through an entirely different branch of the CIA, which had no knowledge of Hunt's prior requests. The later request was never made by Hunt, but by Krogh and Young.

In any event, the requests first came to the CIA's Melloy, who objected on grounds that it had nothing to do with the CIA's mission. Sources said Melloy was ordered to comply with the request, which he did.

Krogh: From

White House to Limbo

By Edward Walsh

Washington Post Staff Writer

Almost daily when he was on the White House staff, Egil (Bud) Krogh Jr. would slip into a sweatshirt at lunch time in the Executive Office Building, step outside and begin to jog around the Ellipse.

Krogh, according to a friend, used to jog about five miles a day, keeping himself in top physical condition and using the quiet times he ran alone, to think about his White House duties, particularly the problems of the District of Columbia, with which he dealt.

It is not known whether Krogh still jogs today. He has dropped out of sight temporarily, taken a leave from his new job as undersecretary of transportation and disconnected his home telephone. But if he still does run alone, his thoughts undoubtedly include how he, a young lawyer from a Seattle law firm that was headed by John D. Ehrlichman, has, like Ehrlichman,

become entangled in the escalating scandal referred to as the Watergate affair.

Krogh, 33, is not connected with the Watergate bugging incident itself. But in disclosures at the Pentagon Papers trial in Los Angeles last week, Krogh was identified as one of two former White House aides who supervised a project aimed at discovering the source of news leaks.

That project, on which two of the seven convicted Watergate conspirators also worked, led to the 1971 burglary of the office of the psychiatrist who treated Daniel Ellsberg, one of the Pentagon Papers trial defendants.

Until those disclosures were made, Krogh was probably best known in Washington as the District of Columbia's man in the White House.

Brought to Washington at the beginning of the Nixon administration in 1969 by Ehrlichman, the President's chief domestic adviser,

Krogh's duties at the White House included liaison with the District government. He was also on the staff of the President's Domestic Council, headed by Ehrlichman, specializing in transportation, crime prevention and narcotics prevention programs.

Krogh's role with the District government included coordinating White House-District work on the city's budget, assisting passage of city legislation in Congress and handling special city problems involving the federal government as they arose.

In that capacity, he earned the respect of District officials and formed, according to several people who know him, a sort of mutual admiration society with Mayor Walter Washington.

"He was strong and honorable in every sense of the word and showed a real sensitivity for the needs and the problems of the city," said one District official who asked not to be identified.

fied by name. "He was a very effective guy."

Last year, the District government, with help from White House aides such as Krogh, had probably its best year ever in pushing city legislation through Congress.

Krogh was born in Chicago and attended Principia College, a small Christian Scientist school in Elmhurst, Ill. Like Ehrlichman and H. R. Haldeman, the President's top two domestic advisers who have resigned in the wake of the Watergate scandal, Krogh is a Christian Scientist.

Ted Lutz, a Transportation Department official who also worked with Krogh when he was at the White House, describes him as "a very spiritual guy" who "relied on his religion for guidance."

Krogh graduated in 1968 from the University of Washington Law School, served in the Navy and worked briefly in Ehrlichman's Seattle law firm before coming to Washington.

Lutz said that at the White House, Krogh did most of his work through Ehrlichman, with whom he seemed close. "He certainly believed in the ideas the President was moving ahead with," Lutz said. He described Krogh as "analytical" and "very interested in the city."

Krogh left the White House last January to become an undersecretary of transportation. A Senate committee that confirmed his nomination cleared him of any complicity in the Watergate bugging incident.

Those that know Krogh also are reserving judgment on his involvement in the Pentagon Papers burglary.

"Obviously all of us are disappointed and hope it will work out," said one friend. "He was a guy who never did anything without thinking it through long and hard."

Said the District official quoted earlier: "For all of us, this whole story—the whole Watergate thing—is just overwhelming."

Mr. Soyars _____
Mr. Thompson _____
Mr. Walters _____
Tele. Room _____

People's World _____

Date 5-6-73

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MAY 22 1973

FILE SPK

Krogh Takes Blame for Burglary

By George Lardner Jr.
Washington Post Staff Writer

Former White House aide Egil Krogh Jr. is taking full responsibility for the September, 1971, burglary at the offices of Daniel Ellsberg's psychiatrist, reliable government sources said yesterday.

Krogh took the blame for the break-in, which was conducted with the CIA's help, in an affidavit given to government investigators Friday.

In the statement, Krogh said that neither President Nixon nor former White House domestic affairs adviser John D. Ehrlichman had advance knowledge of the burglary.

Krogh alluded to a conversation he had with Mr. Nixon in August, 1971, but, according to the Associated Press, he said the talk dealt with news leaks about the Strategic Arms Limitation Talks with the Soviet Union and Mr. Nixon's expressions of concern that the leaks might jeopardize those negotiations.

Currently on leave as under secretary of transportation, Krogh worked at the White House under Ehrlichman, who was until Monday Mr. Nixon's chief domestic adviser. Krogh went on leave Wednesday under orders, sources said, from Secretary of Transportation Claude S. Brinegar.

Ehrlichman told the FBI April 27 that he found out about the burglary only after it was carried out by a team headed by Watergate

conspirators E. Howard Hunt and G. Gordon Liddy. The FBI quoted Ehrlichman as saying that he told the two men, who were then working for the White House, "not to do this again."

The Sept. 3, 1971, burglary was aimed at obtaining Ellsberg's psychiatric records. Hunt told the Watergate grand jury here Wednesday that it was carried out with cameras, disguises, false papers and other "technical assistance" from the CIA. The entire operation, Hunt said, was intended to help the White House assess Ellsberg's "prosecutability."

Government sources said that Krogh, in his affidavit, stated that he had general supervision over the scheme.

One source inside the executive branch voiced strong disbelief about Krogh's reported statement. He said Krogh was at too low a level in the White House to authorize CIA assistance for the Ellsberg burglary.

Reports of the CIA's involvement drew expressions of concern from Senate Majority Leader Mike Mansfield (D-Mont.) and Sen. Henry M. Jackson (D-Wash.), both members of a special Senate oversight committee on the CIA that has been dormant since the death early in 1971 of its chairman, Sen. Richard Russell (D-Ga.).

Mansfield said the reported assistance "does raise a question about the CIA being involved in domestic affairs, which, as I recall, is a violation of law."

A spokesman for Jackson said that the senator "is going to take the matter up personally with the CIA." The oversight committee has not met since Russell's death.

The law setting up the CIA states that it "shall have no police, subpoena, law-enforcement powers or internal-security functions."

Mr. Bell _____
Mr. Baker _____
Mr. Callahan _____
Mr. Cleveland _____
Mr. Conrad _____
Mr. Gebhardt _____
Mr. Jenkins _____
Mr. Marshall _____
Mr. Miller, E. S. _____
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Mr. Bowers _____
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Ms. Herwig _____
Mr. Mintz _____
Mrs. Neenan _____

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The Washington Post Times Herald _____
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New York Post _____
The New York Times _____
The Daily World _____
The New Leader _____
The Wall Street Journal _____
The National Observer _____
People's World _____

Date MAY 6 1973

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Asked whether Hunt's allegations, if true, would put the CIA in violation of that proviso, a CIA spokesman declined comment.

"It's so complicated that I think we're not going out on that plank," he said. "That takes lawyers."

Mansfield said he expects that the Senate's Watergate investigation committee, headed by Sen. Sam J. Ervin Jr. (D-N.C.), will take a careful look at the issue.

Krogh himself has been unavailable for comment. He has stayed away from the Department of Transportation since Wednesday morning, disconnected his home telephone and asked that he be left alone by DOT officials.

Transportation Secretary Brinegar, meanwhile, considers his case a "White House matter," for the moment at least, since the activities in question preceded his transfer to DOT. Officials say Krogh has yet to offer his resignation to Brinegar, and the secretary has not fired him.

"He just told the jury what happened at the time of the burglary," Krogh's special assistant, Ronald Floto, told reporters. "Nothing has happened so far that his resignation is necessary."

As Ehrlichman's chief deputy at the White House in 1971, Krogh headed the team of so-called "plumbers" which was set up around June or July of that year—at Mr. Nixon's orders—to conduct a secret White House investigation of leaks of the Pentagon Papers. The team included Hunt, Liddy and White House aide David Young, a member of the National Security Council staff who recently resigned.

There were conflicting reports on whether Krogh's af-

fidavit would be made public, in light of the issuance Thursday of new White House guidelines on executive privilege. The new guidelines state that past and present members of the White House staff should invoke the privilege in connection with conversations with the President, conversations among themselves involving communications with the President, and presidential papers. "Presidential papers" are supposed to include all documents produced or received by the President, or any member of the White House staff in connection with his official duties.

A White House official told The Washington Post yesterday, however, that the new guidelines will in no way prohibit anyone from testifying about an alleged crime.

According to the Associated Press, an associate of Krogh said that the White House had attempted to suppress his statement. To guard against that, Krogh was said to have sent the federal judge presiding at Ellsberg's trial in Los Angeles one copy of the affidavit through the mails. Another copy was given to chief Watergate prosecutor Earl J. Silbert here for formal transmission.

"Another cover-up's coming," the AP's Brooks Jackson quoted the source as warning.

Within about two hours of AP's first story, the White House put the wire service in touch with another source, who had seen the affidavit.

The wire service said its second source denied any White House interference with Krogh's confession but conceded that the White House had its new guidelines delivered to Krogh's lawyer before the affidavit was signed. Krogh was said

to have written it out voluntarily before a Friday afternoon interview with prosecutor Silbert. The AP quoted the second source as acknowledging that the affidavit might never be made public for reasons of national security.

Other sources told The Washington Post that Krogh, 33, who once worked in Ehrlichman's law firm in Seattle, had a reputation as "Mr. Clean" on the White House staff. They maintained that he would never have acted in the burglary operation on his own.

Krogh's lawyer, William M. Treadwell of Silver Spring, refused to discuss the case with newsmen.

Pentagon Papers trial Judge W. Matt Byrne Jr. received the Krogh affidavit Friday night. He set a hearing for Monday morning to discuss turning over the affidavit to the defense.

Chief defense attorney Leonard Boudin said he also would ask that Byrne take up President Nixon's new guidelines on executive privilege.

Byrne had said Friday that the trial would resume on Tuesday.

Boudin said that Mr. Nixon's action strengthens the defense contention that an immediate dismissal of the case is in order. He said the President's renewed order "nullifies" the value of any hearing that would seek to determine if government misconduct may have prejudiced the case against defendants Daniel Ellsberg and Anthony J. Russo Jr.

The defense motion for dismissal, submitted after a week of sensational revelations involving a secret, White House-directed investigation of the Pentagon Papers case in the summer and fall of 1971, is based on three assumptions:

• A White House approach

to Judge Byrne a month ago regarding the directorship of the FBI has hopelessly compromised the court and destroyed any "appearance of fairness" in the trial.

- The burglary of Ellsberg's psychiatrist's office by a team directed out of the White House, combined with other alleged government misconduct in the case, such as undisclosed wiretaps, is enough in itself to nullify the case.

- The fruits or results of the government misconduct may have been used to obtain the indictment or prepare evidence in the trial, thereby tainting the entire case against Ellsberg and Russo.

On Friday, Judge Byrne rejected the first contention, saying that the face-to-face White House contacts—with Ehrlichman and the President himself—in no way compromised his ability to be fair in this case.

Byrne took under consideration the second contention, after hearing an afternoon of argument, that included the first public disclosure of Hunt's testimony before the Washington grand jury.

It is the third contention—whether the government used what it had illegally obtained in the prosecution of the case—that has become the central issue and provided an agonizing dilemma for Byrne.

The judge has refused to hear arguments on that issue until he has received all of the documents and affidavits with regard to extra-legal government activity in the case. This goal, however, has been frustrated by the slowness of the prosecution to provide the material, either because of transmission and technical delays, or, as the defense contends, government obstructionism.

One of the options Byrne has before ruling is to hold a hearing in which individuals involved—such as Ehrlichman, Dean, Hunt and Liddy—could be subpoenaed for questioning and cross-examination. It is this option that Boudin contended had been eliminated by President Nixon's new guidelines.

Pentagon Papers prosecutor David Nissen said Friday he would file an affidavit confirming that none of the extra-legal material was in any way involved in the prosecution's case.

The burglary scheme was hatched in August, 1971, between the time Ellsberg was first indicted in June and the time of the second, superceding indictment on Dec. 29, 1971. It has since come out that the U.S. attorney in Los Angeles at the time, Robert Meyer, had refused to sign the second indictment.

The Hunt testimony described a grandiose scenario full of clandestine meetings, secret telephone numbers, disguises, false papers, walkie-talkies and a camera concealed inside a tobacco pouch.

Hunt reported that after breaking into the office building in Beverly Hills (which, according to their advance casing, was supposed to have been open) the burglars could find nothing related to Ellsberg.

In that connection, Ellsberg revealed yesterday that

sitting on top of one of the psychiatrist's rifled cabinets was an 80-page paper Ellsberg had written on American Indo China policy.

"These guys," said Ellsberg, "are aging CIA agents reliving nostalgic past glories—in this case the Bay of Pigs. As you look at their operations you have the feeling they've been out of the field for a long time."

In addition to Hunt, the burglary team consisted of Liddy and Bernard Barker, both ex-CIA agents, and two Cubans, a man Hunt identified as a "Mr. Martinez," and Felipe DeDiego. Hunt, Liddy and Barker were later convicted as co-conspirators in the Watergate break-in.

Hunt testified that he staked out the psychiatrist's home on the night of the burglary, while Liddy roved around Beverly Hills in a car, keeping in touch with the burglars by walkie-talkie. The actual burglary was committed by two of the three others, but Hunt did not know which two.

(Mount Clipping in Space Below)

What Hunt Told Jury About Ellsberg Probe

Following are excerpts from the testimony of former White House aide E. Howard Hunt before the Watergate grand jury in Washington:

(Hunt began his testimony by describing how he became a member of the White House staff on July 6, 1971.)

Inasmuch as the government was contemplating at that time a major prosecution which in fact has evolved, it was felt, and I believe Mr. (Egil) Krogh who was the lawyer, suggested that it would be well if something could—if some way could be found whereby a judgment call could be made on Ellsberg in regard to his prosecutability.

To that end extracts were made of material dealing with Dr. Ellsberg's rather peculiar background, and we read these excerpts and concluded that the best instant source of a full read-out, or a reasonably full read-out on Dr. Ellsberg would be through whatever files the psychiatrist had been maintaining on him during the period that Dr. Ellsberg was under analysis.

I don't know who mentioned the possibility of a bag job on the psychiatrist's office first but, in any event, it became a topic of low key conversation around the office.

At that time I was fairly new to the White House. I said, "Well, if you want the material, why can't we just simply get the FBI to procure it?"

Mr. Felt	_____
Mr. Baker	_____
Mr. Callahan	_____
Mr. Cleveland	_____
Mr. Conrad	_____
Mr. Gebhardt	_____
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Mr. Bowers	_____
Mr. Herington	_____
Ms. Herwig	_____
Mr. Mintz	_____
Mrs. Neenan	_____

(Indicate page, name of newspaper, city and state.)

A-3 Herald Examiner
Los Angeles, Calif.

Date: 5/5/73
Edition: Saturday latest
Author:
Editor: Donald Goodenow
Title:

Character: *File*
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Classification:
Submitting Office Los Angeles
☐ Being Investigated

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The [redacted] or, which I believe was provided by Mr. (Gordon) Liddy, was that in the last five or six years, under Mr. (J. Edgar) Hoover's aegis, the FBI ceased raining its agents in entry operations, and that the cadre that the bureau used to maintain for this type of operation was no longer in existence. It had dwindled away. The agents had been reassigned or lost their skills.

I recall raising the question as to whether or not the Secret Service might not be an appropriate unit for such a task. The reply that was given to me, and I believe it was also by Mr. Liddy, was that the White House did not have sufficient confidence in the Secret Service in order to entrust them with a task of this sort.

There came a time shortly thereafter when it was suggested that perhaps the unit, which has been popularly described as "the plumbers" in the press but which was never so called during my incumbency, might be able to undertake such an operation on its own.

Q. Aug. 25, 1971—You and Mr. Liddy traveled to Los Angeles and registered at the Beverly Hilton Hotel.

A. That must be it. In any event, we were authorized to make a preliminary vulnerability and feasibility study for such an operation.

Q. Who authorized that, sir?

A. Mr. Krogh.

Q. Did Mr. Young know about that?

A. Yes.

On or about Aug. 25, as (the prosecutor) has indicated, we did in fact fly to the Los Angeles area and conduct an examination of the external areas of Dr. (Lewis) Fielding's office.

In fact, we passed through the building one evening, took some photographs with a very special camera, and located where Dr. Fielding's home was. We took the mileage and time the distance it would take a man in average traffic to drive between Dr. Fielding's home and his Beverly Hills office.

We did rather thorough, I think professional study of objective. We took photographs outside the building of the area itself and then we returned to Washington and wrote up our findings.

This took the form of [redacted] don't believe it was a formal memorandum, but rather a series of paragraphs that described the operation or the operative circumstances.

The photographs were developed and attached, and then the decision was awaited.

Q. Okay. To whom were the findings and the photographs delivered?

A. Well, I would have to say ultimately to Mr. Krogh. To the extent that Mr. Liddy was in the office all the time, and he and I cooperated in drawing up the study; the vulnerability study, I would have to say that when my portion of it was finished, I left it with Mr. Liddy.

Q. All right. What kind of special camera was this?

A. It was a camera that was concealed inside a tobacco pouch, and it was fitted transversely into the tobacco pouch. It was an experimental model.

Q. Where did you get this camera from?

A. It was issued by the Central Intelligence Agency.

Q. How did you get that issued?

A. It was issued through the representations of Mr. Krogh.

Q. Who did you get it from?

A. It was given to me by a technical services representative of the CIA.

Q. Where did you meet him?

A. In a safe house, the same one that we used when we were given disguises and other physical equipment.

Q. Can you explain to the ladies and gentlemen of the grand jury what a safe house is?

A. Yes sir. A safe house is an area of one sort or another where people on clandestine business are able to meet and transact their business without fear of interruption, of being identified, or being overheard.

Q. Now, Mr. Hunt, did you receive a camera from the CIA at a time different than you received your identification papers and your disguise?

A. Yes, sir.

Q. Then what was the next event?

A. It was pointed out to us, and this had been the understanding all along, that no one with any association with the White House could be involved in any way directly with such an operation.

So I asked whether or not as a result of my old CIA contacts, I could come up with a team capable to make such an entry.

I said that I would look into it, and I must have gone down to Miami at that time to interview Mr. (Bernard) Barker and some of his associates, although I have no particular recollection of it. I must have gone down in that interval.

Mr. Barker said that he would be very glad to help in a national security operation, which is how I described the operation to him.

One of us must have pointed out that the Labor Day weekend would provide an ideal opportunity for such an entry operation, and so we established Labor Day weekend as D-Day, counting back D minus one, and so forth.

On approximately D minus one, or D minus two — well, we had made telephonic arrangements so that Barker and his two friends would fly to California and meet us, I believe in the Beverly Hilton Hotel, signing in under assumed names and would receive further instructions.

Up to that point they had no idea of what the operation was going to be.

Q. Do you want to go right into the operation itself?

A. Yes.

That day I was stationed at Dr. Fielding's residence to make sure that his car remained in his garage. Mr. Liddy was cruising the general area around — the streets in Beverly Hills.

Either two or three men went into the office, pried open a file, the patient file, and began — again, this is hearsay — examined it as they were told to do just before they entered in the operation.

They were told to look for any file, any material on Ellsberg, and to disregard anything else.

It was reported to me that they had gone through every file in Dr. Fielding's office, including the one in his desk, and that there had been absolutely no material in it with the name of Ellsberg on it.

They took a Polaroid camera shot of at least one, if not two of the open files in the file cabinets, or the file drawers, by way of indicating that the job had actually been accomplished.

Q. Now, when you returned to Washington, to whom did you report?

A. At about 4 a.m. immediately following the entry, we were all back in the hotel. Mr. Liddy placed a prearranged call to Mr. Krogh.

Q. Did you make any further report?

A. Yes, sir. When Mr. Liddy and I returned to Washington we made a full report of it to Mr. Krogh and Mr. Young.

Q. Now, the funds for this operation, where did you obtain the funds?

A. The funds were handed, just before we left for California that weekend, to the best of my recollection, by Mr. Krogh directly to Mr. Liddy.

Q. Did you ever have a conversation with Mr. John Ehrlichman relating to this operation?

A. No, sir, not at any time.

Q. Let me ask you this. With respect to Dr. Ellsberg, do you know, or were you ever aware of any other attempts to obtain information about Dr. Ellsberg's psychiatric profile or his background profile in any manner, shape or form?

A. Well, some months subsequent to that, it occurred to me that the CIA might be helpful in providing such a psychiatric profile.

Q. So what did you do?

A. How did I arrange that? I asked — I suggested to David Young — I said, "After all, we had a whole psychiatric unit set up at the CIA to provide in effect second-hand profiles of persons of interest to the U.S. government. That is an activity that has been on-going for many years."

I happened to know the chief of the unit, Dr. Bernard Melloy. I mentioned his name to Mr. Young, and Mr. Young, I believe, was instrumental in bringing Dr. Malloy to our offices in room 16.

Q. Did he provide such report?

A. He did.

WHITE HOUSE AIDE'S AFFIDAVIT

Krogh Admits Burglary Role

By **BROOKS JACKSON**

Associated Press

Former White House aide Egil (Bud) Krogh took full responsibility for the Ellsberg burglary in a sworn affidavit, an unimpeachable source said today.

Krogh said in his affidavit that he had "personal communication" with President Nixon prior to the burglary, but that the conversation wasn't related to the break-in.

Any connection between the two would be "totally mistaken and false," the source said.

Krogh, currently on leave as No. 2 man at the Transportation Department, sent two copies of the affidavit to the presiding judge in the Pentagon Papers trial in Los Angeles.

The White House had made efforts to keep Krogh from confessing, the source said. But the document has been sent by two different routes to the presiding judge in the Pentagon Papers trial in Los Angeles, W. Matt Byrne, the source said.

Mr. Felt ☒
Mr. Baker ☒
Mr. Callahan ☒
Mr. Cleveland ☒
Mr. Conrad ☒
Mr. Gebhardt ☒
Mr. Jenkins ☒
Mr. Marshall ☒
Mr. Miller, E. S. ☒
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Mr. Thompson ☒
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Mr. Herington ☒
Ms. Herwig ☒
Mr. Mintz ☒
Mrs. Neenan ☒

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The Washington Post
Times Herald

The Evening Star (Washington) **A1**

The Sunday Star (Washington)

Daily News (New York)

Sunday News (New York)

New York Post

The New York Times

The Daily World

The New Leader

The Wall Street Journal

The National Observer

People's World

Date **MAY 5 1973**

File 5/22

65-74060-A
NOT RECORDED
46 MAY 22 1973
W. Matt Byrne

79 MAY 23 1973

THE REPORTED confession was written and signed by Krogh, former aide to presidential domestic adviser John D. Ehrlichman.

Deputy White House press secretary Gerald Warren was contacted in Key Biscayne, Fla. last night. He said he would have no comment until he had an opportunity to read the story in full.

Krogh "admitted to general supervisory responsibility" of the Sept. 3, 1971, burglary of the office of Daniel Ellsberg's psychiatrist, the source said.

Krogh's statement also includes a "statement of a personal communication with the President," the source said, and "will disclose the President's own concern with the leakage of the material and his perceived ramifications of that leakage."

In the affidavit Krogh said he talked with Nixon in August 1971 after news leaks concerning the United States Strategic Arms Limitation Talks with the Soviet Union.

Nixon, it was reported, expressed concern that the news leaks could endanger the chances of success for the arms talks. Krogh reportedly said in his affidavit that the conversation wasn't connected to the burglary the next month of the office of a psychiatrist who treated Daniel Ellsberg, now on trial for giving the Pentagon's secret history of the Vietnam War to newspapers in June 1971.

It was unclear whether Krogh's confession would be made public. One source said the White House had made efforts to suppress it, but

another said any question about its release would result only from possible legal problems over national security information contained in the document.

KROGH was questioned for four hours here yesterday by federal prosecutors, apparently about his relationship with the alleged burglary.

The report that Krogh had written a confession came within hours after a disclosure in Los Angeles that E. Howard Hunt Jr. had told the Watergate grand jury in Washington all about the plot to break into the office of Dr. Ellsberg's psychiatrist. Hunt said it was conceived, supervised by and paid for in the White House, and the Central Intelligence Agency supplied the camera and disguises to do the job.

The source which reported that Krogh had confessed said that a White House staff member had personally delivered new White House guidelines on executive privilege to Krogh's attorney in an attempt to stop him from making public his affidavit.

The guidelines, made public by the White House yesterday in Key Biscayne, Fla., say present and former White House members should invoke executive privilege to avoid giving testimony only in connection with "conversations with the President, conversations among themselves involving communication with the President, and as to presidential papers."

The guidelines also say that witnesses are restricted by laws prohibiting the disclosure of classified information concerning national security.

THE SOURCE SAID this was interpreted by Krogh as an attempt to keep him from fully disclosing Nixon's personal concern over the national security aspects of the Pentagon Papers leakage.

Krogh was boss of the White House "plumbers" group, set up by Ehrlichman in July 1971 to investigate leaks of the Pentagon Papers to newspapers.

The group included Krogh, Hunt, National Security Council staff member David Young and G. Gordon Liddy, a Watergate conspirator along with Hunt.

Krogh testified publicly and under oath early this year that he exercised general supervision of the "plumbers," that he personally hired Hunt and Liddy, and that his supervision continued until early October 1971, a month after the Ellsberg breakin.

The source who disclosed Krogh's affidavit said he was concerned that it might never see the light of day even after Judge Byrne receives it.

"HE MAY FIGURE this is so hot that he won't release it," the source said.

He indicated that information relating to national security is contained in Krogh's statement and that the government might contend it would be a violation of national security laws for even a judge to make it public.

Krogh's attorney, William Treadwell, refused to comment last night on an earlier report that Krogh had confessed.

The source said Krogh mailed one copy of the affidavit to Judge Byrne, and that he gave another copy to Watergate prosecutor Earl Silbert for transmittal to the judge.

Krogh was fully implicated in the planning of the Ellsberg burglary by the newly released testimony of Howard Hunt before the grand jury here. That testimony also unqualifiedly implicated the Central Intelligence Agency.



EGIL (BUD) KROGH

—Associated Press

White House Tied to Ellsberg Break-In

By Leroy F. Aarons
Washington Post Staff Writer

LOS ANGELES, May 4—Convicted Watergate conspirator E. Howard Hunt has told a federal grand jury that an elaborate plot hatched, paid for and supervised by high-level White House staff members and involving the Central Intelligence Agency led to the 1971 burglary of the office of the psychiatrist who treated Daniel Ellsberg.

Details of the extraordinary plan are contained in a transcript of Hunt's testimony Wednesday in Washington, D. C., that was read in court today at the Pentagon Papers trial of Ellsberg and co-defendant Anthony J. Russo Jr.

In his testimony Hunt described a spy-novel scenario building to the burglary of the office of Dr. Lewis Fielding in Beverly Hills. Hunt said the project was hatched in

a special "Room 16" in the White House, under the supervision of two men: Egil Krogh, whom he described as "principal deputy" to John D. Ehrlichman, then chief domestic adviser to the President, and David Young, a former member of the National Security Council staff.

Krogh this week took a leave of absence from his current job as under secretary of transportation and Young has resigned.

Hunt said, however, he had no dealings directly with Ehrlichman, whom he said he had met only once, but he said he assumed Ehrlichman knew about it. Ehrlichman told the FBI this week that he found out about the burglary sometime after it occurred.

Ehrlichman also told the FBI that he told Hunt "not to do this again." In his testimony, Hunt said he does not recall that happening:

Q. Specifically, did Mr. Ehrlichman ever direct you not to commit such an act again?

A. Personally?

Q. Personally.

Mr. Bell ✓
Mr. Baker _____
Mr. Callahan _____
Mr. Cleveland _____
Mr. Conrad _____
Mr. Gebhardt *for*
Mr. Jenkins _____
Mr. Marshall *Sam*
Mr. Miller, E. S. *John*
Mr. Soyars _____
Mr. Thompson _____
Mr. Walters _____
Tele. Room _____
Mr. Kinley _____
Mr. Armstrong _____
Mr. Bowers _____
Mr. Herington _____
Ms. Herwig _____
Mr. Mintz _____
Mrs. Neenan _____
Mr. Tamm ✓

McL

The Washington Post Times Herald *A-1*

The Evening Star (Washington) _____

The Sunday Star (Washington) _____

Daily News (New York) _____

Sunday News (New York) _____

New York Post _____

The New York Times _____

The Daily World _____

The New Leader _____

The Wall Street Journal _____

The National Observer _____

People's World _____

Date **MAY 5 1973**

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A. No, sir, I met Mr. Ehrlichman only once in my life and that was in June . . .

Q. Did you ever have any other conversation, other than that one occasion with Mr. Ehrlichman?

A. No, sir . . . I would construe Mr. Ehrlichman's refusal to participate in another operation in these terms — he simply said to Krogh, if he said that — it was probably, "Forget about it. Don't do it, or don't do something like that again."

Hunt testified that the burglary team consisted of himself, G. Gordon Liddy, former CIA agent Bernard Barker, all three of whom later were convicted in the Watergate

break-in, and two Cubans — A "Mr. Martinez" and Felipe DeDiego.

Martinez may have been Eugenio Martinez, who pleaded guilty in the Watergate case. DeDiego was allegedly involved in an assault on Ellsberg at a Washington rally on May 2, 1972. DeDiego told the Miami Herald recently he was hired by Barker to disrupt the rally.

The entire operation was conducted with much secrecy and subterfuge. "It was pointed out to us," Hunt testified, and this had been the understanding all along, that no one with any association with the White House could be involved in any way directly with such an operation."

The Hunt material was read in court today in support of a defense motion calling for immediate dismissal of the case against Ellsberg and Russo on grounds of governmental misconduct.

Byrne earlier refused to dismiss the case on a defense contention that he had compromised by attending two meetings with Ehrlichman last month in which the Directorship of the Federal Bureau of Investigation was mentioned.

But Byrne took under consideration the second part of the motion, which claimed that the case should be dismissed because of the burglary and other alleged misconduct on the part of the government.

Hunt's testimony revealed for the first time CIA involvement in the Ellsberg affair. He said the CIA provided cameras, disguises, false papers and other "technical assistance" for the burglary operation. He described meetings with CIA agents in so-called "safe houses"—secret hideaways in Washington.

He also said he was given a "sterile number" by the CIA — an unlisted phone number whose billings are not reflected. Hunt said he was to call this number when "a material requirement needed to be met."

In addition, when the Ellsberg burglary failed to turn up anything, the White House team turned to the CIA and a Dr. Bernard Malloy, who Hunt said heads a special CIA psychiatric unit that specializes in "second-hand profiles of persons of interest to the U.S. government. That is an activity that has been on-going for years." Hunt said Malloy did provide a profile of Ellsberg, which was turned over to Young or Krogh in the form of a memorandum.

The entire scheme, said Hunt, was designed to improve the "prosecutability" of Ellsberg.

"Mr. Ellsberg had been indicted not long before," he said, "and the White House had been receiving, I believe on a daily basis, reports from the FBI and other law enforcement agencies of the government."

Hunt reportedly was hired by the White House in July, 1971, shortly after the first indictment of Ellsberg.

"I was given access to all of this material on an absolutely routine basis. I became very familiar with the case myself. At that time, as I understood it, there was some concern in the White House about the appropriateness of seeing the prosecution actually take place with regard to Dr. Ellsberg and his associates . . .

"It was felt, and I believe Mr. Krogh, who was the lawyer, suggested that it would be well if something could — if some way could be found whereby a judgment could be made on Ellsberg in regard to prosecutability."

Hunt said he suggested that the best way to do that would be to obtain a "full readout" on Ellsberg "through whatever files the psychiatrist had been maintaining on him during the period that Dr. Ellsberg was under analysis."

It was finally decided to use what later became known as "the plumbers" — a *sub rosa* White House group formed for so-called special security tasks.

Hunt and Liddy flew to Los Angeles to "case" Fieldings office around Aug. 25, 1971. They took photographs of the outside of the building with a camera provided by the CIA, Hunt said, and drew up a "vulnerability study" which they presented to the White House.

"Our recommendations were of a positive nature. We felt that the operation could be performed," said Hunt. He said he was asked to put together a team from his old CIA contacts, to avoid any sign of White House complicity.

Hunt said he went to Miami, where he hired Barker, Martinez and DeDiego. Labor Day weekend was chosen as the target date. Armed with disguises, false papers and equipment provided at various "safe houses" by the CIA (including one on Massachusetts Avenue across from the National Cathedral), the burglary team descended on Los Angeles and reconnoitered at the Beverly Hilton Hotel.

"We knew from previous reconnaissance that the [Fielding] building was not locked and that access was quite feasible because a cleaning woman was there for several hours during the night, and both the front and rear door were customarily left open."

"We wanted a pretexted entry, a fact that was obtained by equipping two of the men from Miami with delivery men's clothing and a large green suitcase which actually carried the camera equipment inside it."

"The suitcase itself was adorned with Air Express invoices and stickers, 'Rush Immediately' to Dr. Fielding." The men managed to gain entry on the pretext. They dropped the camera case off inside and punched the unlocking button on the inside of the door and left, Hunt said.

Later, at around 11 p.m., on Sept. 3, 1971, while Hunt kept guard on Fielding's home, and Liddy scouted around Beverly Hills in a car, two of the three other men went to the office building, to find that the cleaning lady had left early and doors were locked, "it's being Saturday night of a holiday weekend, or whatever," Hunt testified.

Foiled by their apparently faulty intelligence, the men had to force their way in. According to Hunt, they could not find a single thing about Ellsberg in the files. (This contradicts an affidavit by Fielding this week, which said there were Ellsberg files in his cabinet and they had been tampered with.)

The team reported back to Krogh by phone and in person back in Washington. "The fact of the matter is that Mr. Krogh didn't want to hear very much about it because we had been unsuccessful . . . We told him what had happened, that there were no fingerprints left behind. It was a clean operation, but it had failed to produce."

For awhile some thought was given to burglarizing Fielding's home, said Hunt, but that was dropped as not "viable." It was then at Hunt's suggestion that Melloy was called in by Young to put together the psychiatric dossier.

The day's dramatic events began when court reconvened this morning, with Judge Byrne again demanding to know from prosecutor Nissen about the existence of alleged Justice Department wiretaps of principals and newspaper reporters involved in the Pentagon papers case.

Nissen contended that there was no such operation. Byrne responded: "Considering this 302 [the number on an FBI report on material taken from Hunt's safe], I want you to go further than that. Some of the material and a great deal of the equipment taken from his office appears to have interception capabilities."

At this point, Boudin, criticizing the government's slowness in providing investigative material, moved that the testimony in the trial be halted and the dismissal motion be taken up immediately.

Byrne, however, ordered the jury seated. After the jurors entered, Boudin announced in their presence he would not question witnesses.

The day's witness was Philip Habib, now U.S. ambassador to Korea, but from 1968 to 1971 a member of the United States' negotiating team at the Paris peace talks with North Vietnam.

Habib, testifying as a government rebuttal witness, said material in the Pentagon papers could have been prejudicial to the national defense had it fallen into the hands of a foreign nation.

Toward the end of the morning, the Defense renewed its demand that Byrne hear the dismissal motion, this time arguing principally on the issue of the meetings with Ehrlichman.

Byrne agreed, and the defense took up the argument, charging that Ehrlichman's alleged involvement with Watergate and his reported overtures to Byrne regarding the directorship of the FBI established a link between the Pentagon papers case and "one of the most insidious scandals in the history of the Republic."

But Byrne disagreed. "Taking into consideration all the facts, I am convinced beyond any doubt at all that [the meetings] have not in any way compromised my ability to act with fairness in this case," he said. He then denied that portion of the dismissal motion.